SUBMITTED

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1925

No. [redacted] 199

WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

PETITION FOR CERTIORARI FILED AUGUST 17, 1925

CERTIORARI GRANTED OCTOBER 19, 1925

(31,409)

(31,409)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 686

WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

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[fol. 1] [Caption omitted]

[fol. 2] **IN CIRCUIT COURT OF JASPER COUNTY, MISSOURI, AT JOPLIN, APRIL TERM, 1922**

No. 30164

WILLIAM A. RHEA, Plff.,

vs.

THOMAS C. SMITH, Deft.

JUDGMENT—May 20, 1922

Now at this day this cause comes on for trial, the plaintiff appears by Thomas Hackney, his attorney, the defendant by S. W. Bates, his attorney, and both parties announce ready, waive a jury and submit this cause to the court for trial. After hearing all the evidence and being fully advised in the premises the court finds the issues in favor of the defendant.

It is therefore ordered and adjudged by the court that the plaintiff take nothing by means of his suit herein; that this cause be and the same is hereby dismissed; that the defendant be discharged and recover of and from the plaintiff the costs of this cause and that execution issue therefor

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[fol. 3] IN CIRCUIT COURT OF JASPER COUNTY

[Title omitted]

ORDER ALLOWING APPEAL—May 20, 1922

Now comes the plaintiff and files herein his affidavit for an appeal, said affidavit being by the court examined and deemed sufficient an appeal in this cause is granted to the Supreme Court of this State.

Clerk's certificate to foregoing papers omitted in printing.

[fol. 4] IN SUPREME COURT OF MISSOURI, APRIL TERM, 1924

No. 24056

WILLIAM A. RHEA, Appellant,

vs.

THOMAS C. SMITH, Respondent

Appeal from the Circuit Court of Jasper County, Division Number Two

Hon. Grant Emerson, Judge

Appellant's Abstract of Record from Circuit Court of Jasper County—Filed March 13, 1924

CAPTION

This suit was instituted in the Circuit Court of Jasper County, Missouri, at Carthage, on the 11th day of February, 1922, by the filing of the plaintiff's petition as follows (caption and signature omitted):

PETITION—Filed February 11, 1922

Count I

Plaintiff for cause of action against defendant states that plaintiff [fol. 5] is the owner in fee simple and entitled to the possession of the following described real estate situate in the County of Jasper and State of Missouri, to-wit: The west half of lots nine (9) and ten (10) of the northwest fractional quarter of Section two (2) and also fifteen (15) acres off of the east end of lot ten (10) of the northeast fractional quarter of section three (3), all in township twenty-nine (29), range thirty-three (33).

Plaintiff further states that the defendant is in possession of said real estate and unlawfully retains the possession thereof from plaintiff and claims some interest therein adverse to the plaintiff, but that in fact the defendant does not own any right, title or interest in and to any of said real estate.

Plaintiff further states that the reasonable value of the monthly rents and profits of said real estate is fifty dollars ($50.00).

Wherefore plaintiff prays the court to ascertain and determine and adjudge the title to said real estate as between plaintiff and defendant and to adjudge and decree that plaintiff is the owner in fee simple thereof and that defendant has no right, title or interest therein and that plaintiff is entitled to the possession of said real estate and that he recover of defendant the monthly rents and profits thereof and that plaintiff be awarded the possession of said

real estate and said rents and that the court issue all such writs and process to recover the possession and rents as may be necessary and for cost of suit.

[fol. 6] Count II

Plaintiff for another and further cause of action against defendant states that on the — day of January, 1922, plaintiff was lawfuly entitled to the possession of the following described real estate situate in the County of Jasper and State of Missouri, to-wit: the west half of lots nine (9) and ten (10) of the northwest fractional quarter of section two (2) and also fifteen (15) acres off of the east end of lot ten (10) of the northeast fractional quarter of section three (3), all in township twenty-nine (29), range thirty-three (33); that afterward, on the — day of January, 1922, defendant wrongfully and unlawfully entered into possession of said real estate and now wrongfully retains same from the plaintiff; that the monthly value of the lands and profits from said real estate is fifty dollars ($50.00) and that plaintiff has been damaged by reason of the wrongful entry and detention of said premises by defendant in the sum of five hundred dollars ($500.00).

Wherefore plaintiff prays judgment against defendant for the possession of said real estate and for his damages in the sum of five hundred dollars ($500.00), together with fifty dollars ($50.00) per month as the monthly value of the rents and profits of said premises and for costs.

Answer

"Comes now the defendant and waives service of summons and process in the above cause and enters his appearance therein.

[fol. 7] "Defendant for answer to plaintiff's petition filed in said cause denies each and every allegation in said petition contained.

Wherefore, having fully answered defendant prays to be discharged with his costs."

Minute Entry of Order Transferring Cause

On March 14, 1922, and during the February term of said court the cause was on written stipulation of the parties transferred to Division No. 2 of the Circuit Court of said County at Joplin.

Record Entries of Trial

Record Entry of Judgment

The cause came on for trial in said Circuit Court at Joplin on May 20, 1922, at the April term of said court, a jury being waived, and resulted in a finding and judgment on said day in favor of the defendant.

RECORD ENTRY OF ORDER OVERRULING MOTION FOR NEW TRIAL

Afterwards on the 20th day of May, 1922, and within four days after the rendition of said judgment plaintiff filed his motion for new trial in said cause, which was on said day taken up, heard and overruled by the court, all of which appeared by the following order entered in said cause:

"Now on this day comes the plaintiff and files his motion for new trial in this cause, which motion is by consent taken up, and being seen, heard and fully understood by the court is overruled, plaintiff excepting."

RECORD ENTRY OF ORDER ALLOWING APPEAL

Afterwards on the said 20th day of May, 1922, during said term of court, plaintiff filed his affidavit for an appeal in this cause, and the affidavit being deemed sufficient an appeal was allowed by said court to the Supreme Court of Missouri, and an order was entered giving [fol. 8] plaintiff until on or before the 3rd day of the September, 1922, term of said court to file his bill of exceptions. The appeal was duly taken.

Afterwards on the 17th day of June, 1922, the plaintiff presented to the judge of said court his bill of exceptions which was allowed, signed and duly filed in said court and made a part of the record in said cause, which said bill of exceptions is in words and figures as follows, to-wit (caption omitted):

Bill of Exceptions—Filed June 17, 1922

CAPTION

Be it remembered, that upon the trial of the above entitled cause on the 20th day of May, 1922, the same being the 30th judicial day of the April, 1922, term of the said Circuit Court within and for the County of Jasper and State of Missouri, before the Honorable Grant Emerson, judge of Division Number Two of said court, the following proceedings were had in this cause, to-wit:

APPEARANCES OF COUNSEL

Thomas Hackney and H. W. Blair, attorneys for plaintiff; S. W. Bates and W. R. Robertson, attorneys for Defendant.

Agreed Statement of Facts

It is admitted that Blanche H. Whitlock was the owner of the property in controversy on the 10th day of January, 1921. It is admitted that on that day a judgment was entered in the District Court of the United States for the Southwestern Division of the Western [fol. 9] District of Missouri, at Joplin, of which the following is a copy:

In the District Court of the United States for the Southwestern Division of the Western District of Missouri

Catherine K. Newton, Plaintiff,

v.

William A. Rhea and Mont B. Mining Company (Impleaded with First National Bank of Carthage, Missouri, et al.), Defendants,

and

William H. Whitlock and Blanche H. Whitlock, Plaintiffs,

v.

William A. Rhea and Mont B. Mining Company (Impleaded with First National Bank of Carthage, Missouri, et al.), Defendants.

(Consolidated for Trial)

Order of Dismissal of District Court in the Case of Newton vs. Rhea—Filed January 10, 1921

Now at this day this cause comes on again for hearing on the mandate of the Circuit Court of Appeals filed herein, whereupon in conformity with said mandate on motion of defendants, it is ordered, adjudged and decreed by the court, as follows:

1. That the order, judgment and decree of this court hereto entered in this cause be and the same is hereby set aside, vacated and for naught held and esteemed.

2. That the complainants' several bills of complaint herein be and they are hereby dismissed with prejudice and the defendants fully discharge therefrom.

3. That defendants, William A. Rhea and Mont B. Mining Company have and recover of the complainants, Catherine K. Newton, William H Whitlock and Blanche H. Whitlock all their costs in [fol. 10] this consolidated action expended and that writs of fieri facias issue herein for the collection of said costs.

Arba S. Van Valkenburgh, District Judge.

[File endorsement omitted.]

OFFERS IN EVIDENCE

Mr. Hackney: I offer in evidence Exhibit B, a deed made by the United States marshal, W. A. Shelton, under a sale of the west half of lots nine and ten of the northwest fractional quarter of section two, township twenty-nine, range thirty-three; sale occurring on the first day of October, 1921, at the county court house door in the City of Joplin during the session of the State Circuit Court, and at said sale William A. Rhea became the highest and best bidder and the property was stricken off and sold to him; that said marshal's deed is dated the 24th day of October, 1921, and filed for record in the recorder's office of Jasper County on the 26th day of October, 1921, and recorded in deed book 320 at pages 139 and 140.

Said Exhibit B being in words and figures as follows, to-wit:

EXHIBIT B TO OFFER IN EVIDENCE

United States Marshal's Deed

To all to whom these presents shall come I, W. A. Shelton, United States Marshal for the Western District of Missouri, send Greeting:

Whereas, on the 10th day of January, 1921, a judgment for costs [fol. 11] was rendered in the District Court of the United States for the Southwestern Division of the Western District of Missouri at Joplin in favor of William A. Rhea and Mont B Mining Company, and against Catherine K. Newton, William H. Whitlock and Blanche H Whitlock which costs have been taxed in the sum of $8,890.20, and

Whereas, a writ of execution was on the 22nd day of July, 1921, issued by the clerk of said court on said judgment and to me directed and delivered on July 29, 1921, by virtue of which said execution I, the said marshal, did on the 29th day of July, 1921, levy upon and seize all the right, title, interest and estate of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, of, in and to the following described real estate situate in the County of Jasper in the State of Missouri, to-wit:

Lot twelve (12) in Cassil Place, an addition to the City of Carthage; also the west one-half of lots nine (9) and ten (10) of the northwest fractional quarter of section two (2) township twenty-nine (29) range thirty-three (33), and having previously to the day of sale hereinafter mentioned given at least four (4) weeks' notice of the time, terms and place of sale and of the real estate to be sold and where situate as the law directs by publication of such notice once a week for at least four weeks prior to such sale in the Carthage Daily Democrat, a newspaper printed regularly, issued and having a general circulation in said county and state where said real estate is situate; by virtue of which said execution and notice I did on the 1st day of October, 1921, between the hours of nine o'clock in the forenoon [fol. 12] and five o'clock in the afternoon of said day, agreeably to

said notice at the County Court House in the City of Joplin in said county and state, and during the session of the Circuit Court of said county at the September term thereof for the year 1921, expose to sale at public auction for ready money all the right, title, interest and estate of said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and for each of them in and to the above described real estate, and William A. Rhea of Carthage, Mo., being the highest bidder for said real estate at the aggregate price and sum of two hundred dollars ($200.00), having bid one hundred dollars ($100.00) on said Lot Twelve (12) in Cassil Place and having bid one hundred dollars ($100.00) on the west half of said lots nine (9) and ten (10), all the said real estate was stricken off and sold to said William A. Rhea for the sums bid by him as aforesaid.

Now, therefore, in consideration of the premises and of the said sum of two hundred dollars ($200.00) to me, the said marshal, in hand paid by the said William A Rhea, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law I, W. A. Shelton, United States marshal as aforesaid, do hereby assign, transfer and convey to the said William A. Rhea all the right, title, interest and estate of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, of, in and to the above described real estate that I might sell as marshal as aforesaid by virtue of the aforesaid execution and notice.

[fol. 13] To have and to hold the right, title, interest and estate hereby conveyed into the said William A. Rhea, his heirs and assigns forever, with all the rights and appurtenances thereunto belonging.

In witness whereof, I, W. A. Shelton, United States marshal of the Western District of Missouri, have hereunto set my hand this 24th day of October, A. D. 1921.

W. A. Shelton, United States Marshal for the Western District of Missouri.

UNITED STATES OF AMERICA,
State of Missouri, Western District, ss:

Be it remembered, that on the 24th day of October, 1921, and during the regular session of the District Court of the United States for the Western Division of the Western District of Missouri, before Hon. Arba S. Van Valkenburgh, Judge of said court, came into open court W. A. Shelton, United States marshal for the Western District of Missouri, and personally known to the judge of said court to be such officer, and in open court acknowledged that he executed the above and foregoing deed as such marshal for the uses and purposes therein mentioned; and this certificate of acknowledgment was by said court ordered to be endorsed hereon.

In testimony whereof, I, E. R. Durham, clerk of said court, have hereunto set my hand and affixed the seal of said court. Done at my office in Kansas City in said District this 24th day of October, 1921.

Edwin R. Durham, Clerk United States District Court, by H. C. Miller, Deputy. (Seal.)

[fol. 14] Filed for record October 26, 1921, at 1:40 o'clock P. M. and recorded in Deed Book 320 at pages 139 and 140.

Ed Gerkey, Recorder of Deeds of Jasper County, Missouri.

Mr. Hackney: I offer in evidence Exhibit C, a marshal's deed made by I. K. Parshall, United States marshal, covering fifteen acres off of the east end of lot ten of the northeast fractional quarter of section three, township twenty-nine, range thirty-three. The sale was on the 28th day of January, 1922, at the county court house door, at the door of the county court house in Jasper County, and W. A. Rhea became the highest and best bidder for said tract. Both said marshal's deeds being under writs of fiere facias on the judgment dated the 10th day of January, 1921.

Said Exhibit C being in words and figures as follows, to-wit:

EXHIBIT C TO OFFER IN EVIDENCE

United States Marshal's Deed

To all to whom these Presents shall come I, I. K. Parshall, United States Marshal for the Western District of Missouri, send Greeting:

Whereas, on the 10th day of January, 1921, a judgment for costs was rendered in the District Court of the United States for the southwestern division of the Western District of Missouri at Joplin in favor of William A. Rhea and Mont B Mining Company, and against [fol. 15] Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, of which costs duly taxed in said cause there remains an unpaid balance of $8,714.70, and

Whereas, an alias writ of execution was on the 20th day of December, 1921, issued by the clerk of said court on said judgment and to me directed and delivered on December 22, 1921, by virtue of which said execution I, the said marshal, did on the 22nd day of December, 1921, levy upon and seize all the right, title, interest and estate of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, of, in and to the following described real estate situate in the County of Jasper in the State of Missouri, to-wit: Fifteen (15) acres off of east end of lot ten (10) of the northeast fractional quarter of section three (3), township twenty-nine (29), range thirty-three (33); and having previously to the day of sale hereinafter mentioned given at least four (4) weeks' notice of the time, terms and place of sale and of the real estate to be sold and where situated as the law directs by publication of such notice once a week for at least four weeks prior to such sale in the Carthage Daily Democrat, a newspaper printed regularly, issued and having a general circulation in said county and state where said real estate is situated; by virtue of which said execution and notice I did on the 28th day of January, 1922, between the hours of nine o'clock in the

forenoon and five o'clock in the afternoon of said day, agreeably to said notice, at the County Court House door in the City of Joplin in said county and state, and during the session of the Circuit Court of [fol. 16] said county at the January term thereof for the year 1922, expose to sale at public auction to the highest bidder for ready money all the right, title, interest and estate of said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them in and to the above described real estate, and William A. Rhea of Carthage, Mo., being the highest and best bidder for said real estate at the price and sum of twenty-five dollars ($25.00), the said real estate was stricken off and sold to said William A. Rhea for the sum bid by him as aforesaid.

Now, therefore, in consideration of the premises and of the said sum of twenty-five dollars ($25.00) to me, the said marshal, in hand paid by the said William A. Rhea, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law, I, I. K. Parshall, United States marshal as aforesaid, do hereby assign, transfer and convey to the said William A. Rhea all the right, title, interest and estate of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, of, in and to the above described real estate that I might sell as marshal as aforesaid by virtue of the aforesaid execution and notice.

To have and to hold the right, title, interest and estate hereby conveyed unto the said William A. Rhea, his heirs, and assigns forever, with all the rights and appurtenances thereunto belonging.

In witness whereof, I, I. K. Parshall, United States marshal of [fol. 17] the Western District of Missouri, have hereunto set my hand this 31st day of January, A. D. 1922.

I. K. Parshall, United States Marshal for the Western District of Missouri.

UNITED STATES OF AMERICA,
State of Missouri, Western District, ss:

Be it remembered, that on the 31st day of January, 1922, and during the regular session of the District Court of the United States for the western division of the Western District of Missouri, before Hon. Arba S. Van Valkenburgh, judge of said court, came into open court I. K. Parshall, United States marshal for the Western District of Missouri, and personally known to the judge of said court to be such officer, and in open court acknowledged that he executed the above and foregoing deed as such marshal for the uses and purposes therein mentioned; and this certificate of acknowledgment was by said court ordered to be endorsed hereon.

In testimony whereof, I, E. R. Durham, clerk of said court, have hereunto set my hand and affixed the seal of said court. Done at my office in Kansas City in said district this 31st day of January, 1922.

Edwin R. Durham, Clerk United States District Court, by H. C. Spaulding, D. C. [L. S.]

Filed for record February 1, 1922, at 8:40 o'clock A. M. and recorded in Deed Book 320 at pages 354 to 355.

Ed Gerkey, Recorder Jasper County, Missouri.

[fol. 18] ADMISSIONS OF DEFENDANT

It is admitted that defendant, Thomas C. Smith, purchased the property in controversy from Blanche H. Whitlock and William H. Whitlock, her husband, and received a warranty deed therefor on the 5th day of April, 1921, deed filed for record the same day in the recorder's office of Jasper County, consideration five thousand dollars, $2,800.00 paid in cash to Blanche H. Whitlock and purchaser, Thomas C. Smith, assumed the payment of a mortgage for the balance of the purchase price, the mortgage being held by Nelson Loan Company of Kansas City. It is admitted that the mortgage was made in December, 1920, and duly recorded.

It is admitted that the past rents and profits up to this time may be taken as $50.00 and that the value of the monthly rents and profits for the future at $10.00 per month.

It is admitted that Thomas C. Smith has been in possession of the property ever since the date of his purchase on the 5th day of April, 1921.

It is admitted that both of the marshal's sales were duly published and advertised as recited in the several deeds.

OBJECTIONS OF DEFENDANT TO OFFERS IN EVIDENCE

Mr. Robertson: Defendant objects to the introduction of Exhibit A, the purported judgment upon which the deeds are alleged to be based for the reason that the said purported judgment does not fix or determine the amount of the costs, or the kind or character to be taxed therein, and there is nothing in any of the exhibits that [fol. 19] have been offered which shows or tends to show that any costs have been taxed therein as required by law and said judgment is incompetent, irrelevant and immaterial.

Defendant objects to the introduction of Exhibit B, the purported marshals' deed, for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that it does not convey a title that is superior to the title held by this defendant and the deed is not so executed and acknowledged as to become prima facie evidence of the facts therein recited and shows upon its face that the sale was not had at the place or in the manner provided for and required by law and conveys no title superior to the title of this defendant.

Objection overruled and deed admitted in evidence.

As to Exhibit C, defendant offers the same objection as to Exhibit B.

Objection overruled and deed admitted in evidence.

It is admitted there was no transcript of the judgment in the Federal Court filed with the circuit clerk or clerk of the Circuit Court of Jasper County, Missouri.

Mr. Hackney: Plaintiff offers in evidence the two writs of execution described in the marshals' deeds, together with marshals' returns on each writ.

Mr. Robertson: Defendant objects for the reason incompetent, irrelevant and immaterial, and they are not sufficient upon which to base a sale, marshal's deed, and the returns are insufficient.

Objection overruled and writs admitted in evidence.

Said writs and returns thereon, being in words and figures as follows, to-wit:

[fol. 20] EXHIBIT IN EVIDENCE

UNITED STATES OF AMERICA,
Southwestern Division of the Western District of Missouri, set:

The President of the United States of America to the Marshal of the Western District of Missouri, Greeting:

Whereas, on the 10th day of January in the year of our Lord one thousand nine hundred and twenty-one at our District Court of the United States for the Southwestern Division of the Western District of Missouri, before our judges thereof, William A. Rhea and Mont B. Mining Company recovered against Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock the sum of — in a cause decided in said court, together with $8,890.20 costs and charges in that behalf expended, which to the said William A. Rhea and Mont B. Mining Company were adjudged as appears to us of record.

These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock you cause to be made the sum so adjudged against them with the costs aforesaid, and that you have the same before the judges of our said court on the 2d Monday of January next, to render the same to the said William A. Rhea and Mont B. Mining Company and that you certify to our said judges how you executed this writ. Hereof fail not, and have you then and there this writ.

[fol. 21] Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, the 22nd day of July, A. D. 1921.

Issued at office in Joplin, Missouri, under the seal of said District Court, the day and year last aforesaid.

Edwin R. Durham, Clerk, by Alta Ruffin, Deputy Clerk. (Seal.)

(Costs itemized and endorsed on writ aggregate $8,890.20.)

Marshal's Return

I, W. A. Shelton, United States marshal for the Western District of Missouri, do hereby certify that I received the within writ on the 29th day of July, 1921, and that I executed same on the said day by levying upon and seizing all the right, title and interest of the within named Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, of, in and to the following described real estate situated in the County of Jasper and State of Missouri, to-wit: Lot twelve (12) in Cassil Place, an addition in the City of Carthage; also the west half of lots nine (9) and ten (10) of the northwest fractional quarter of section two (2), township twenty-nine (29) range thirty-three (33); and afterwards I did advertise the said real estate for sale by publication of notice of sale, giving the time, terms and place of sale and a description of the real estate to be sold and where situated, which said notice I caused to be published once a week for at least four weeks prior to said sale in the [fol. 22] Carthage Daily Democrat, a newspaper printed, regularly issued and having a general circulation in said county and state where said real estate is situated, a copy of said notice with printer's affidavit proving publication of same being hereto attached and made a part hereof, and by virtue of said notice and in pursuance thereof I did on the 1st day of October, 1921, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, agreeably to said notice, at the County Court House door in the City of Joplin in said county and state, and during the session of the Circuit Court of said county during the September term thereof for the year 1921, expose for sale at public auction for ready money, all the right, title, interest and estate of said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, in and to the above described real estate and at said sale William A. Rhea of Carthage, Missouri, being the highest bidder for said real estate at the aggregate price and sum of two hundred dollars ($200.00) having bid one hundred dollars ($100.00) on said lot twelve (12) in Cassil Place, and having bid one hundred dollars ($100.00) on the said west half of lots nine (9) and ten (10), all the said real estate was stricken off and sold to said William A. Rhea for the sum so bid by him as aforesaid and said William A. Rhea having paid to me the said sum of two hundred dollars ($200.00), the amount of his bid, I executed to him a deed for said real estate as the law directs.

I further certify that I have applied the proceeds of said sale, as follows:

[fol. 23] Marshal's fees—serving writ	$2.00
3% commission	6.00
Executing deed prepared by attorney	1.00
Total	9.00
Balance brought forward	$9.00

Marshal's expenses:

Paid Carthage Daily Democrat for publication of sale notice	$15.00
Paid for internal revenue stamp on deed	.50
Total marshal's fees and expenses	$24.50

and at the request of attorney for said execution creditors I have applied out of the proceeds of said sale the sum of $81.45, being the full amount of witness fees endorsed on said writ and have transmitted said sum to the clerk of said court at Joplin, for distribution and I have further applied the balance of the proceeds of said sale, to-wit: the sum of $94.05 to the costs adjudged in favor of William A. Rhea and Mont B. Mining Company, and have paid same to their attorney, Thomas Hackney.

I have made diligent search for and failed to find in this state any other goods, chattels, lands or tenements belonging to either of said execution debtors on which to levy this writ, and I therefore return this writ not satisfied.

W. A. Shelton, United States Marshal.

[fol. 24] EXHIBIT IN EVIDENCE

UNITED STATES OF AMERICA:
Southwestern Division of the Western District of Missouri, set:

The President of the United States of America to the Marshal of the Western District of Missouri, Greeting:

Whereas, on the 10th day of January in the year of our Lord one thousand nine hundred and twenty-one at our District Court of the United States for the Southwestern Division of the Western District of Missouri, before our judges thereof, William A. Rhea and Mont B. Mining Company recovered against Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock the sum of — in a cause decided in said court, together with $8,890.20 costs and charges in that behalf expended, which to the said William A. Rhea and Mont B. Mining Company were adjudged as appears to us of record.

These are, therefore, to command you, that of the goods and chattels, lands and tenements, of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock you cause to be made the sum so adjudged against them with the costs aforesaid, and that you have the same before the judges of our said court on the 2nd Monday of January next, to render the same to the said William A. Rhea and Mont B. Mining Company and that you certify to our said judges how you executed this writ. Hereof fail not, and have you then and there this writ.

[fol. 25] Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, the 20th day of December, A. D. 1921.

Issued at office, in Joplin, Missouri, under the seal of said District Court, the day and year last aforesaid.

Edwin R. Durham, Clerk, by Alta Ruffin, Deputy Clerk.

Endorsed on back as follows:

Costs on Mandate Cir. Court of Appeals	$73.90
(Witness fees $81.45 paid on former execution.)	
Costs as per order filed June 15, 1921	8,734.85
	$8,808.75
Credit net proceeds on former	94.05
	$8,714.70

Marshal's Return on Execution

I, I. K. Parshall, United States marshal for the Western District of Missouri, do hereby certify that I executed the within writ in said district on the 22nd day of December, 1921, by levying upon and seizing all the right, title, interest and estate of the within named Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them in and to the following described real estate situate in the County of Jasper in the State of Missouri, towit: Fifteen (15) acres off of east end of lot ten (10) of the northeast fractional quarter of section three (3) township twenty-nine (29), range thirty-three [fol. 26] (33); and afterwards on the 28th day of January, 1922, after four (4) weeks' advertisement of the notice of sale of said real estate duly published in the Carthage Daily Democrat, as per proof of publication thereto attached, I did sell said real estate to the highest bidder for cash at the County Court House door of the City of Joplin in said county and state to William A. Rhea, the highest and best bidder for the sum of twenty-five dollars ($25.00) and did duly execute to him a deed for said real estate as such purchaser.

Out of the proceeds of sale I have applied the sum of $18.25 to the payment of costs incurred on this writ, leaving the sum of $6.75 to apply on the debt of said execution and I further certify that I have made a diligent search for and fail to find any other property of either of said debtors in said execution on which to levy the balance of the same.

I therefore return this writ unsatisfied.

I. K. Parshall, United States Marshal.

This was all the evidence.

Defendant's Requested Instructions

The plaintiff thereupon asked the court to give the following declarations of law, which were by the court refused, the plaintiff at the time duly excepting and now excepting to the action, ruling and refusal of the court to give said declarations of law, and each thereof.

I

The court declares the law to be that the judgment of the United States District Court for the Southwestern division of the Western [fol. 27] District of Missouri, read in evidence, dated January 10, 1921, became a lien on the land of Blanche H. Whitlock, the land in question, on the date of the rendition of said judgment in the Federal Court at Joplin, in Jasper County, Missouri, and that the marshal's sales of the property in controversy in this suit and the purchase thereof by the plaintiff, vested in plaintiff a title superior to that claimed by the purchase by the defendant from said Blanche H. Whitlock, which purchase was made on the 5th day of April, 1921.

Refused.

II

The court declares the law to be, under the admitted facts in this case, that the plaintiff, by his purchases at the marshal's sales, and by virtue of the marshal's deeds, read in evidence, became the owner of the land in controversy in this suit and that his title thereto is superior to the claim of defendant, and that plaintiff is entitled to a judgment, establishing his title in fee to said land and also entitled to recover fifty dollars ($50.00), as damages for use of the property, and ten dollars ($10.00) per month for future rents and profits.

Refused.

III

The court declares the law to be that the judgment of the Federal District Court of Joplin, Missouri, rendered on January 10th, 1921, became a lien on the land in question from the date of its rendition, and it was not necessary that a transcript of such judgment be filed in [fol. 28] the office of the clerk of the Circuit Court of Jasper County, Missouri.

Refused.

No declarations of law were given by the court.

JUDGMENT

Thereupon, during said regular term of court, on the 20th day of May, 1922, the court found the issues and rendered judgment in favor of the defendant, Thomas C. Smith.

MOTION TO SET ASIDE VERDICT AND FOR A NEW TRIAL

And afterward, during said regular term of court, and within four days after the rendition of the decision and judgment aforesaid,

to-wit: On the 20th day of May, 1922 the plaintiff filed his motion for a new trial in said cause as follows (caption and signature omitted):

"Now comes the plaintiff, within four days after the rendition and finding of the judgment herein, and during the same regular term of said court, and moves the court to set aside the finding and judgment herein and grant plaintiff a new trial in this cause for the reasons following, to-wit:

Because the court erred in refusing to give the declarations of law numbers 1, 2 and 3, asked by the plaintiff.

Because the finding and judgment of the court is for the wrong party.

Because the findings and judgment of the court should have been for the plaintiff.

Because the court erred in finding for the defendant under the pleadings, evidence and admitted facts."

[fol. 29] Order Overruling Motion for New Trial

Which said motion coming on to be heard was by the court on the 20th day of May, 1922, and during said regular term of court, overruled, the plaintiff at the time duly excepting and now excepting to the action of the court in overruling said motion.

Order Allowing Appeal

Thereupon, on the 20th day of May, 1922, and during said regular term of court, the plaintiff filed his affidavit for an appeal in this cause and an appeal was allowed by the court to the Supreme Court of this state, and plaintiff given until on or before the third day of September, 1922, term of this court within which to file his bill of exceptions.

Said affidavit in appeal being in words and figures as follows (caption omitted):

Thos. Hackney, attorney for the plaintiff in the above entitled cause, being sworn, upon his oath says, that the appeal prayed for by plaintiff is not made for vexation or delay, but because he believes plaintiff aggrieved by the judgment and decision of the court.

Thos. Hackney.

Subscribed and sworn to before me this 20th day of May, 1922. A. E. Taggart, Clerk.

The order of record granting said appeal is as follows (caption omitted:)

"Now comes the plaintiff and files herein his affidavit for an appeal, said affidavit being by the court examined and deemed sufficient, and appeal in this cause is granted to the Supreme Court of this state."

[fols. 30-32] ORDER SETTLING BILL OF EXCEPTIONS

And now here, on this 17th day of June, 1922, and within the time so allowed by the court for filling bill of exceptions herein, the plaintiff presents this, his Bill of Exceptions, and prays the court that the same may be signed, sealed and made a part of the record herein, which is accordingly done.

Witness my hand as judge of said division of said court, this the day and year last above written.

Grant Emerson, Judge of Division Number Two, Jasper County Circuit Court.

[File-endorsement omitted.]

[fol. 33] IN SUPREME COURT OF MISSOURI, DIVISION NO. 2

[Title omitted]

ARGUMENT AND SUBMISSION—April 17, 1924

Come now the said parties, by attorneys, and after argument herein, submit this cause to the Court.

IN SUPREME COURT OF MISSOURI, DIVISION NO. 2

[Title omitted]

ORDER TRANSFERRING CAUSE TO COURT EN BANC—October 10, 1924

Now, at this day, Judge John T. White having dissented from the opinion of Judge David E. Blair, and Judge R. F. Walker being absent, and there being no opinion of the Court herein, it is considered and ordered by the Court of its own motion that this cause be, and the same is hereby, transferred to Court en Banc.

[fol. 34] IN SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

ARGUMENT AND SUBMISSION—January 24, 1925

Come now said parties, by attorneys, and after argument herein, submit this cause to the Court.

IN SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

JUDGMENT—April 13, 1925

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jasper County rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellant his costs and charges herein expended and have therefor execution. (Opinion filed.)

[fol. 35] IN SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

OPINION—Filed April 13, 1925

Suit in two counts. The first to determine title to certain real estate in Jasper county, and the second in ejectment to recover possession of such real estate. There was judgment for the defendant in the trial court, and he appealed.

The facts are undisputed. One Blanche H. Whitlock was the common source of title, and January 10, 1921, owned the property in dispute. On that day a judgment in a certain cause in which she was plaintiff, pending in the United States District Court for the Southern Division of the Western District of Missouri, at Joplin, was dismissed, and the cost of the case adjudged against her in the sum of $8,890.20. No transcript of this judgment was ever filed in the office of the Clerk of the Circuit Court of Jasper county.

On April 5, 1921, Blanche Whitlock conveyed the property in dispute to the defendant, Thomas C. Smith, for a consideration of $5,000, of which $2,800 was paid in cash, the purchaser assuming a mortgage on the premises for the balance.

On July 22, 1921, execution was issued upon the judgment, and by virtue of that execution the United States Marshal sold for $200 to the plaintiff Rhea, a portion of the property in dispute, and by marshal's deed conveyed it to him.

[fol. 36] On December —, 1921, another execution was issued on the judgment under which the marshal sold the remainder of the land in dispute. It was purchased by the plaintiff for $25.00, and conveyance made to him.

It is claimed by appellant that the judgment of the Federal court was the lien on the real estate from its rendition, that he acquired title through the execution sales, and therefore his title was superior to any title acquired by subsequent conveyance of the judgment

debtor. Respondent claims that in the absence of a transcript of the same, filed in the office of the Clerk of the Circuit Court of that county, the judgment of the Federal Court was not a lien, and that the conveyance to respondent prior to the execution sales, passed good title.

The statutes of the State of Missouri relating to the lien of judgments are as follows:

"Sec. 1554. Lien of Judgment in Supreme Court, Courts of Appeals, and Federal Courts in This State.—Judgments and decrees obtained in the Supreme Court, in any United States district or circuit court held within this state, in the Kansas City Court of Appeals or the St. Louis Court of Appeals, shall, upon the filing of a transcript thereof in the office of the clerk of any circuit court, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed." Mo. R. S. 1919.

"Sec. 1555. Lien in Courts of Record Generally.—Judgment and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held." Mo. R. S. 1919.

[fol. 37] "Sec. 1556. The Commencement, Extent, and Duration of Lien.—The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered." Mo. R. S. 1919.

The Federal Statutes affecting the liens of judgments in a Federal Court (Act of 1888), was as follows:

"Sec. 1. Judgments and decrees rendered in a (circuit or) district court of the United States within any state, shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state: Provided, that whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana, before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state."

[fol. 38] 2. "The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and con-

venient indices and cross-indices of the judgment records of said courts, and such indices and records shall be at all times open to the inspection and examination of the public."

Section 3 of the Act, amended from time to time, in 1895 was as follows:

3. "That nothing herein shall be construed to require the docketing of a judgment or decree of a United States Court, or the filing of a transcript thereof, in any state office within the same county or the same parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county, if the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

I. Section 1554, Mo. R. S. 1919, says, "judgments and decrees obtained in the Supreme Court, in any United States District or circuit court held within this State, in the Kansas City Court of Appeals or the St. Louis Court of Appeals, shall, upon the filing of a transcript thereof in the office of the clerk of the circuit court, be a lien," on real estate in the county.

There are two Federal Districts in this State, as there are three state courts of appeals districts in this State. Can it be said that a judgment rendered by the Supreme Court would be a lien upon the real estate of a judgment defendant in Sole county without filing a transcript of the judgment with the circuit clerk of that county, while [fol. 39] such a transcript would have to be filed in order to make it a lien upon real estate in any other county? Likewise, would a judgment, rendered by the Kansas City Court of Appeals, be a lien upon real estate of the judgment defendant in Jackson county without filing a transcript in the office of the circuit clerk, while it would not be a lien on property in any other county unless such transcript was filed? Certainly that is not the general understanding of the bar, nor is it the correct interpretation of the statute. In such case a transcript must be filed with the circuit clerk of the county where the property is, regardless of where the court happens to sit. In that respect the United States District and Circuit courts are put on the same basis as the state courts having a territorial jurisdiction more than the county.

It is argued by appellant that Section 1554 R. S. 1919 conflicts with the Federal Statute. So it would if Section 3 of the Federal Statute were still in force. The purpose of the Act of 1888, as it existed before the repeal of Section 3, is thus stated by the Federal Circuit Court in the case of Dartmouth Savings Bank v. Bates, 44 Fed. l. c. 548-9:

"It is quite obvious that if Congress or the federal courts had possessed the power to require the clerks of the state courts to enter on the records of these courts the judgments of the federal courts as was provided in the case of judgments of the state courts, that the

rule that the lien of a judgment of a federal court was co-extensive with the territorial jurisdiction of the court would never have been adopted. The process acts did not cover the case, and could not be made to do so. If the courts held a lien was restricted to the county in which the judgment was rendered, this would give a preference to suitors in the state courts, because they could extend the lien of their judgments beyond the county in which they were [fol. 40] rendered by filing transcripts in the clerk's office of other counties; but suitors in the federal courts were denied that privilege. The rule, therefore, was adopted of making the lien co-extensive with the jurisdiction of the court.

" 'This rule resulted in giving suitors in the federal courts a preference over those in the state courts as to the territorial extent of the lien and worked a hardship on the citizens generally. The mass of people relied confidently on the records in the clerk's office of their county disclosing all judgments that were liens on property in the county. Most people were ignorant of the all prevailing lien of a judgment in the federal court, and they bought and sold lands on the faith of what the county records disclosed. The result was that cases of great hardship occurred. Persons who bought and paid for lands on the faith that the records in the county clerk's office showed the condition of the land with reference to judgment liens thereon, afterwards lost their land by reason of the liens of judgments in federal courts held in some other county and often at a distance of hundreds of miles from the county in which the lands laid.' "

"To correct these hardships and to put the suitors in the state and federal courts on an equal footing in respect of the territorial extent of the lien of judgments in the two jurisdictions, in so far as Congress could do it, the Act of August 1, 1888, was passed."

Two significant statements appear in that excerpt: First, that the Federal Court was powerless to cause a clerk of the State circuit court to file a transcript of a judgment of the Federal court; second, [fol. 41] it was important that the people should have one place in which to ascertain whether there was a judgment lien against the property with which they are concerned. The appellant seeks a construction of the Federal Statute the same as it would read if Section 3 had not been repealed. Section 3 provided that there shall be no requirement to file a transcript in any county office if "the Clerk of the United States Court be required by law to have a permanent office and judgment record open at all times for public inspection in such county."

That condition obtained in this case; the Federal Court had an office in Jasper county, containing a judgment record, open at all times for public inspection. If Section 3 had been still in force that provision would have answered the purpose of the law, but Section 3 was repealed and the maintenance of such an office where judgment records are open to inspection has no effect upon the determination of the question at issue. The Act of Congress must be construed according to its terms set out in Sections 1 and 2; it

must be construed with reference to the repeal of Section 3, and some significance must be attached to the Act of Congress in repealing that section. Without that section, transcripts of judgments of a Federal Court were required to be filed in the county records when transcripts of judgments in state courts were required to be so filed. Section 3 relieved a judgment creditor in the Federal Court from that requirement in a certain instance. The repeal of the section shows an intent to make that requirement.

Having in view the purpose of repealing that provision of the Federal Statute, we must construe its remaining provisions. It provides that the judgments of Federal courts, within the State, "shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general [fol. 42] jurisdiction of such state."

It is evident that it was the intention by that statute to place judgments of Federal courts in the same position as judgments of the State court and not to give them any advantage. The lien provided for is on property "throughout such state" in the same manner as judgments of a court of general jurisdiction in the state. That would, of course, apply to all property in the territorial jurisdiction of the court. When a judgment in the Federal court is rendered there is no distinction, as to where the lien applies, between the county where the court happens to sit and any other county within the territorial jurisdiction of the court.

The appellant's argument proceeds upon the theory that because the circuit court is the only State court of general jurisdiction, and because the Federal district and circuit courts are courts of general jurisdiction, the filing of the transcript in the county where the court sits, may be omitted in the case of a Federal court the same as in the State circuit court. Section 1555, R. S. 1919, does not provide for such liens when a judgment is rendered by a court held in the county. It says that a judgment rendered by a court of record shall be a lien on the real estate of the person against whom it is rendered, situate in the county "for which" the court is held, not "in" which. The Federal Court sitting in Jasper county is not held "for" that county any more than for any other county in the western district of Missouri. It is held for the entire District. The court may hear a case in Jasper county and render judgment in the case in Greene county, or Jackson county, or, as some times happens, the court may hear part of the evidence in one county and the remainder in another, and render judgment in a third, and pass upon a motion for rehearing in a fourth. It sits for the entire district, one county is of as much importance as any other, and no more; Jasper county in which the court happened to sit in the present instance is en- [fol. 43] titled to no more advantage than any other county in the district. Apparently the intention was to place the Federal courts on an equality with the state courts of similar territorial jurisdiction.

Evidently it was the policy of the law to have one definite place where a person might go to ascertain whether there are any judgment liens affecting real estate in which he might be interested; he

would not have to go to several places. To say that, in order to place the Federal District Court on equality with the state court, a judgment of that court must be a lien in the county where it is rendered without filing the transcript with the clerk of the circuit court, is to give that court an advantage over the state circuit courts of every other county in that district. For Instance: in the Southern Division of the Western District of Missouri, parties litigant come from counties in every part of the division. Parties to litigation arising in a county distant from where the court is held, upon the rendition of a judgment would have a lien in the county where the court is held, whereas the same party, if the suit were pending in the state court in the county where the cause originated, would not have any such lien until a transcript of the judgment was filed. For instance, suppose a party in Lawrence county should sue a non-resident in the Federal court, and judgment should be rendered in Jasper county where the property of the judgment defendant is. On the theory of the appellant that judgment would be a lien without the filing of a transcript. Whereas, if another suitor in Lawrence county, having the same kind of a case, should sue in the State court of Lawrence county and obtain a judgment at the same time, he could not have a lien on the property of the defendant in Jasper county until he had first filed his transcript. In providing for equality between the judgment of federal courts and state courts, so far [fol. 44] as the lien is concerned, the endeavor was to place them upon an equality with all the state courts of general jurisdiction, and not merely with one particular state court.

The alleged discrimination in favor of a State Court against a Federal Court, sitting in the same county, is only apparent. The provision that the lien of a judgment shall begin from its rendition means on the same day of its rendition. It would take but a short time to transcribe a judgment of the Federal Court and file it with the Clerk of the State Court on the day of its rendition, and thus put it on par with the judgment of the State Court rendered on the same day. A case in point is In Re Jackson Light & Traction Company v. Newton, et al., 269 Fed. 223. That arose in the Federal Court of Appeals for the Fifth District concerning a judgment rendered in Mississippi. The State Statute provided for the enrollment of a judgment in the State Court, in order that it might become a lien upon the property in the county. Judgments of the Federal Court, the Supreme Court, and Chancery courts became liens from the time they were enrolled. Whereas, the judgment of a state court in the county where it was rendered when it was enrolled, became a lien upon the property in that county from the time of its rendition. It is claimed by appellant that this case was not in point because in either case, whether it was a federal judgment or a judgment in a state court, no lien attached until the judgment was enrolled. The enrollment, however, was apparently for the purpose of furnishing evidence that there was a judgment. The lien, of which the enrolled judgment in the local court was evidence, attached from the rendition of the judgment, whereas the lien of the Federal Court and the Supreme Court of the State did not attach

until enrolled in the office of the Clerk of the Circuit Court of the county. The distinction in that case, if there is one in favor of the State Court, was even more pronounced than the requirement of our State Statute in Missouri.

[fol. 45] But under the present law of the State, circumstances easily could arise where a judgment in the Federal Court would have an advantage over a judgment in the State Court, rendered at the same time. Under Section 1556, if more than one judgment is rendered against the same defendant at the same term of the State Circuit Court, the lien of neither judgment begins on the date of its rendition, but the liens of both judgments date from the last day of that term of the court. A judgment in the Federal Court might have an advantage in that the lien would begin from the time the transcript was filed, although it might be rendered later than the two judgments rendered in the State Court but before the expiration of the term at which they were rendered.

The judgment is affirmed

Graves, C. J., Woodson and Walker, JJ., concur. Ragland, J., concurs in result. D. E. Blair, J., dissents in separate opinion. Atwood, J., dissents.

J. T. White, Judge.

[fol. 46] In the Supreme Court of Missouri, en Banc, October Term, 1924, January Call, 1925

No. 24056

William A. Rhea, Appellant,
vs.
Thomas C. Smith, Respondent

Dissenting Opinion

This case was assigned to me in Division Two, where I wrote an opinion holding that the judgment below should be reversed and remanded with directions. My brother White there wrote an opinion, which was labeled a dissenting opinion, and took the contrary view. As there was no opinion in division, the case was transferred to the Court en Banc. Here the majority of the court rejected my opinion and the case was reassigned to Judge White and he has written the opinion of the court. I have carefully considered his opinion and cannot yield my concurrence therein and respectfully dissent. I will use my divisional opinion, omitting the statement of facts. Certain other suggestions have been added.

The sole question, presented by the record blow and by the briefs the statement of facts. Certain other suggestions have been added.

The sole question, presented by the record below and by the briefs and arguments of counsel in this court, is whether or not a judgment of a federal district court is a lien upon real estate of the

judgment debtor, situated in the county where such judgment is [fol. 47] rendered, from the date of its rendition, without a certified transcript thereof having been filed in the office of the clerk of the circuit court of such county. If so, the judgment should be reversed. If not, the judgment should be affirmed.

It is conceded that in Congress rests the sole power to legislate upon the subject of liens of judgments of courts of the federal government. We must, therefore, first look to the acts of Congress. Section 1 of the Act of August 1, 1888 (25 Statutes at Large, 317) reads as follows:

"Judgments and decrees rendered in a circuit or district court of the United States within any state, shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state; Provided, that whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana, before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state."

Section 2 of said act throws no particular light upon the subject of our inquiry. It merely provides that clerks of the courts of the United States shall keep records and indices of judgments of said courts. The court of general jurisdiction mentioned in section 1 is the circuit court in Missouri. That court and the supreme court and the several courts of appeals, together with the [fol. 48] county court and the probate court, are courts of record in this state. (Sec. 2323 R. S. 1919.) Section 1555, R. S. 1919, provides that "judgments and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held." Section 1556 provides that such lien shall commence on the day of rendition and continue for three years.

It is appellant's contention that, as the circuit court is the state court of general jurisdiction and as its judgments are liens upon the real estate of judgment debtors situate in the county for which such court is held and, as section 1 of the federal act, above quoted, provides that judgments of the federal courts "shall be liens on property throughout such state *in the same manner and to the same extent and under the same conditions only*" as judgments rendered by the circuit court, appellant's judgment against Mrs. Whitlock became a lien against the real estate here involved from and after its rendition in the federal court and that appellant's title, acquired by purchase at the sale under execution issued on such judgment, is superior to the title of respondent by virtue of a deed from the judgment

debtor, executed and delivered after such judgment was rendered. To arrive at the correct conclusion, it is necessary to understand the history, nature and extent of liens of federal court judgments prior to the enactment by Congress of the Act of August 1, 1888. At that time judgments of federal courts were liens upon real estate of the judgment debtor, not only in the county where such judgments were rendered, but in all counties within the territorial jurisdiction of the court rendering same.

The majority opinion quotes from the opinion of Judge Caldwell in Dartmouth Savings Bank v. Bates, 44 Fed. 546, where such history is discussed, but omits a very important part of such opinion [fol. 49] and I here quote it in connection with the quotation set out in Judge White's opinion, towit:

"The first clause of the act places judgment liens in a federal court *on the same footing in all respects* as a judgment lien in a state court of general jurisdiction. But the power of congress was not adequate to the task of *extending the territorial operation of a judgment lien* in the mode provided by state laws for a judgment in the state court. Congress was confronted with the difficulty pointed out by Mr. Justice McLean, the law of a state might provide for filing and docketing a transcript of a judgment of a state court in the clerk's office of any county in the state, and in this way extend the lien of a judgment beyond the county in which it was rendered. But there was no federal clerk's office, or other like office, in each county in the state in which a judgment rendered in a federal court could be docketed; and congress could not make it obligatory on the state clerks to docket and enter a judgment of a federal court on their records. But it was entirely competent for the state to require her clerks to perform this service, and the proviso in section 1 of the act declares, in legal effect, that when the laws of a state provide for docketing in her clerks' offices, or other offices, the judgments of federal courts, in the same manner that judgments in her own courts may be docketed, then, and not before, the territorial extent (*in other respects they were already the same*) of the lien of a judgment in a federal court in that state shall be the same as that of a judgment in the state court. Where the laws of a state provide for docketing the judgments of its own courts in any county in the state, but do not make a like provision as to the judgments of the federal court, the act of congress is not operative; and *in such states the lien of a judgment of a federal court continues to be co-extensive with its* [fol. 50] *territorial jurisdiction.*" (Italics my own.)

It is apparent from reading the first section of the act of August 1, 1888, that Congress intended to change the existing rule that federal court judgments are a lien upon lands throughout the territorial jurisdiction of such courts, only in those states which passed laws authorizing federal court judgments to be registered, recorded, docketed, indexed or otherwise conformed to the rules and requirements relating to the judgments and decrees of state courts, and that, where any state has not passed such laws, the rule that federal judgments are a lien throughout the territorial jurisdiction of such courts is still in full force and effect.

In Lineker v. Dillon, 275 Fed. 460, Van Fleet, J., in discussing laws of such character passed by the state of California, said, at page 475:

"I am satisfied that the legislation, whether from inadvertence or otherwise, does not, for the reasons stated, afford that degree of 'conformity' which the act of Congress contemplates as essential to bring it within the latter and put judgments of federal courts on an equality with those of the state; that consequently the act of Congress does not take effect in this state, but the judgments of these courts must be regarded as constituting therein liens on the real estate of judgment debtors throughout the extent of their territorial jurisdiction."

This state has enacted legislation enabling transcripts of federal court judgments to be filed in the offices of the clerks of the circuit courts of the counties of the state and thereupon to become liens upon the real estate belonging to judgment debtors, situate therein, [fol. 51] in the same manner as judgments of courts of one county may be transcripted to another county. (Secs. 1554 and 1583, R. S. 1919.)

Taking by itself the language of that part of section 1 of the federal act preceding the proviso, I think there can be no doubt that the judgment we are considering became a lien upon the property here involved from the day of its rendition. The language "in the same manner and to the same extent and under the same conditions" is broad enough to make a federal court judgment a lien in the county where it is rendered without filing a transcript thereof, *if a judgment of the state court of general jurisdiction constitutes such lien*. "In the same manner" and "under the same conditions" can mean nothing else. "To the same extent" may refer to the kind of property to which such lien attaches or to the territorial extent of the lien or to both. If a state makes its judgments a lien on real estate only, then federal judgments become liens on such property only. If such lien extends only to the county, then the lien of the federal court judgment is so limited. The status of the lien of a judgment of the state court of general jurisdiction fixes the status of the lien of federal court judgments *in every respect*. Such is the only meaning which can fairly be given to section 1 of the federal act.

Respondent argues and the majority of my brethren seem to hold that the repeal by Congress in 1916 (39 Statutes at Large, 531) of section 3 of Act of August 1, 1888, as amended in 1895, shows that it was the intention of Congress to make a federal court judgment a lien upon real estate in the county where same was rendered only upon filing of a transcript therein. Section 3, as enacted, read as follows:

"Nothing herein shall be construed to require the docketing of a judgment or decree of a United States court or the filing of a tran- [fol. 52] script thereof, in any state office within the same county or parish in the State of Louisiana, in which the judgment or decree is

rendered in order that such judgment or decree may be a lien on any property within such county."

In 1895 the following words were added thereto:

"If the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish." (28 Statutes at Large, 814.)

The fact of such repeal furnishes respondent with a very plausible argument that section 1 did not originally and does not now make a federal court judgment a lien in the county where rendered unless a transcript thereof is filed in such county. I regard the argument as unsound. We are not advised of the reasons presented to Congress which actuated it in enacting section 3 in the first place or in later repealing said section, after it had been amended. The provision that a federal court judgment should be a lien upon rendition in the county where such judgment was rendered without filing a transcript therein gave an advantage to federal judgment creditors not possessed by judgment creditors *in the courts of those states which require particular steps to be taken in addition to the mere rendition of a judgment before it becomes a lien in the county where rendered* and section 3 tended to prevent the complete harmony and conformity aimed at in section 1. A very good and completely satisfying reason for repealing section 3 is found in the evident purpose of Congress to put federal judgments on exactly the same footing as state judgments. The enactment of section 3 failed to accomplish this in all cases and its repeal did effectually accomplish such purpose in all cases and in every state. It is inconceivable to me, as it is contended in respondent's brief, that, by such repeal, Congress intended [fol. 53] that judgments of federal courts should not become a lien in the county where rendered unless and until a transcript thereof is filed in the circuit clerk's office, while the state court judgment becomes a lien therein without such procedure. Such a purpose would be in hopeless conflict with the purpose expressed in section 1.

Respondent places great reliance upon, and the majority opinion cites, the case of In re Jackson Light & Traction Co. 265 Fed. 389, and same case upon appeal, 269 Fed. 223. Mississippi is one of the states which requires certain subsequent steps to be taken before a state court judgment becomes a lien *even in the county of rendition*, and, of course, under section 1 of the federal act, the same steps had to be taken *in that state* with respect to a federal court judgment before it became a lien. In that case the judgment creditor in the federal court failed to have his judgment enrolled in the proper office in the county until after the judgment debtor went into bankruptcy and it was held that such judgment was not entitled to priority. The reasons advanced by the district court were similar to those advanced by respondent here, towit, that section 3 provided that no transcript was necessary and that its repeal made the filing of such transcript necessary. Holmes, District Judge, said: "Section 3 obviated the necessity of such enrollment, but the repeal of section 3, by the act above quoted, which became effective January 1, 1917, rendered

the same procedure as to a federal court judgment necessary in the county where the judgment was rendered as was required in the other counties of the state in order to obtain a lien." The learned district judge seemingly erred in his reasoning, although his conclusion was correct. The enrollment was in fact necessary under section 1 of the federal act, because such enrollment was necessary in the case of a state court judgment in the count where rendered.

[fol. 54] When the case came to the Circuit Court of Appeals for the Fifth Circuit, no such reasons were given for the affirming the judgment. Section 1 of the federal act was quoted and it was said:

"We cannot see, therefore, where there is any discrimination against the United States Courts when they are put on the same footing with the State Supreme Court, and every other state court at law or in equity where the judgment is not rendered in the same court on whose judgment roll an abstract must be enrolled in order to give it a lien on the property of the judgment debtor."

The fact of the repeal of section 3 of the federal act was not mentioned by the circuit court of appeals and therefore the effect of such repeal was not considered. I think the case lends no support to the contention of respondent here.

The majority opinion, as does respondent, lays much stress upon section 1554 of our statute, which provides that judgments obtained in the supreme court, the court of appeals and federal trial courts shall be liens in *any* county in the state wherein a transcript thereof shall be filed. Apparently this section is one making provision for a lien broader in territorial application than the lien attaching upon mere rendition of the judgment. It apparently has no reference to the latter sort of lien.

It required no action upon the part of the Missouri legislature to give a lien to a judgment of the federal district court. That is the exclusive prerogative of Congress. Therefore, our legislature, in enacting section 1554, undertook to do nothing more than to put federal court judgments upon an equality with state court judgments by authorizing the filing of transcripts thereof in any county of the state and providing for a lien therein upon such filing.

[fol. 55] Section 1554 is the conformity statute of Missouri without the enactment of which the act of Congress of 1888 would have no application whatever to federal court judgments rendered in this state. If that section be construed by us as requiring the filing of a transcript of a federal court judgment in the office of the clerk of the circuit court of the county wherein such federal court judgment is rendered, then Missouri has passed no adequate conformity law and the judgment of appellant must be held to be a lien throughout the territorial jurisdiction of the federal district court which rendered it, including Jasper county (Lineker v. Dillon, supra; Dermott v. Carter, 109 Mo. 21), and respondent's case is not helped in the least, because a sale under execution upon appellant's judgment gave appellant good title to the real estate under either view.

In my opinion, the judgment below should be reversed with di-

rections to the trial court to set aside its judgment for defendant and to enter its judgment finding that, as against the defendant, the plainiff (appellant) is the owner of the real estate here involved and that defendant has no right, title or interest therein and ejecting defendant therefrom, with judgment in plaintiff's favor for the agreed rents and profits.

Atwood, J., concurs herein. David E. Blair.

[fols. 56-61] Petition for rehearing, covering 6 pages, filed April 22, 1925, omitted from this print.

[fol 62] In Supreme Court of Missouri, En Banc

[Title omitted]

Order Denying Petition for Rehearing—May 23, 1925

Now, at this day, the Court having considered and fully understood the motion of the said appellant for a rehearing herein, doth order that the said motion be, and the same is hereby overruled.

In Supreme Court of Missouri

Clerk's Certificate

State of Missouri, set:

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in a cause between William A. Rhea, Appellant, and Thomas C. Smith, Respondent, No. 24,056, as fully as the same appear of record and on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said Supreme Court, at my office in the City of Jefferson, State aforesaid, this 14th day of July, 1925.

J. D. Allen, Clerk of the Supreme Court of the State of Missouri. (Seal of the Supreme Court of Missouri.)

[fols. 63 & 64] In Supreme Court of the United States

Order Allowing Certiorari—Filed October 19, 1925

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office Supreme Court, U. S.
FILED
AUG 17 1925
WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

No. [redacted] 199

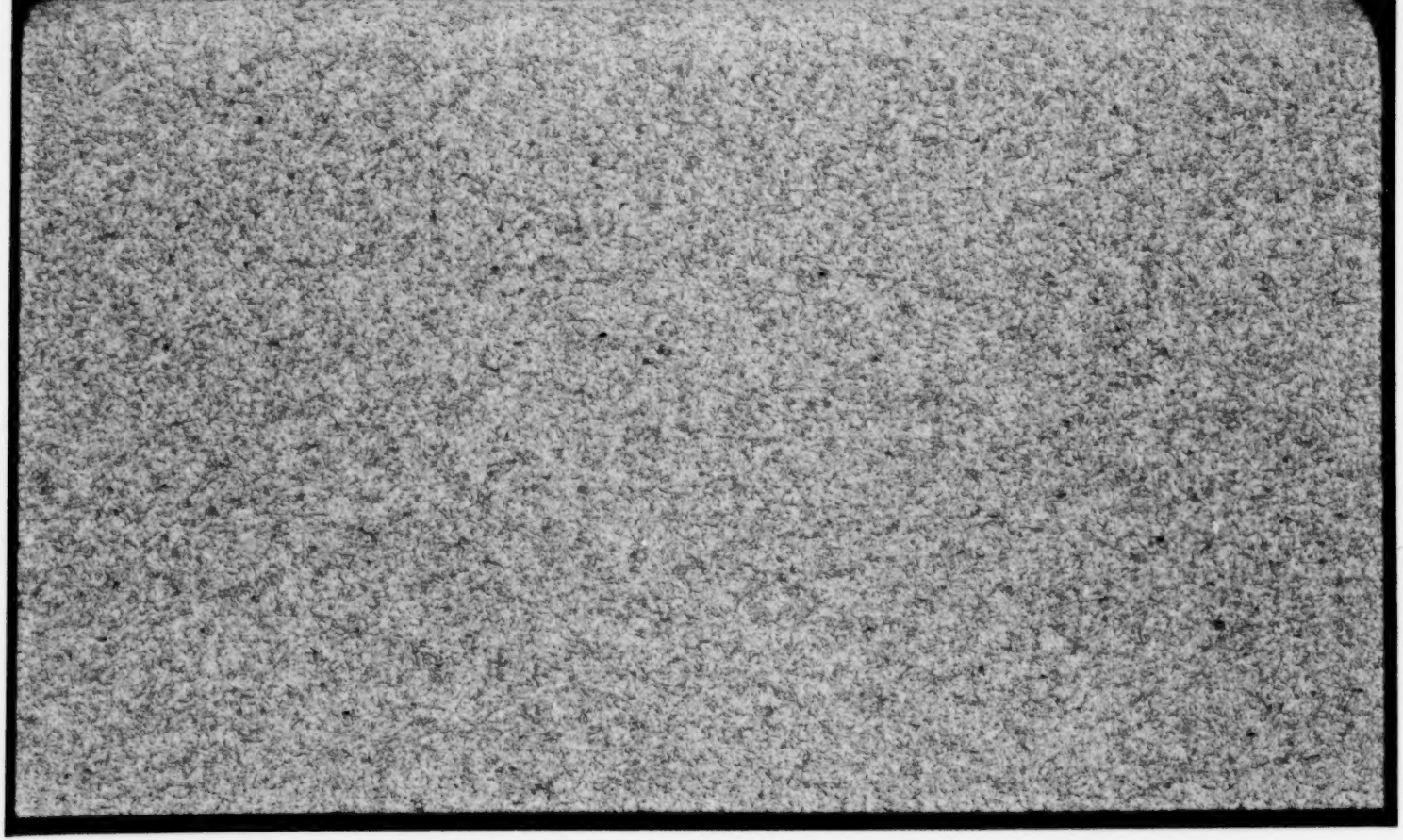
WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

THOMAS HACKNEY,
Counsel for Petitioner.



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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

No. 686.

WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, William A. Rhea, respectfully petitions this honorable court to grant its writ of certiorari to the Supreme Court of the State of Missouri and to remove therefrom to this court for review the record in the case, there lately pending, entitled William A. Rhea, appellant, *vs.* Thomas C. Smith, respondent, being No. 24056 on the docket of that court, the petitioner herein being the appellant

therein. The judgment of the Missouri Supreme Court became final on the overruling of the appellant's motion for rehearing on May 23, 1925 (R., 28). A duly certified copy of the entire record of said cause is herewith presented.

Question Presented.

The sole question involved in this case in the State court, as well as on this petition for certiorari, is this: Under the Act of Congress of August 1, 1888, chapter 729, section 1 (25 Stat. at Large, 357), relating to the lien of judgments of Federal district courts, is a judgment rendered on January 10, 1921, by the United States District Court at Joplin, in Jasper County, Missouri, a lien on real estate of the judgment debtor in said county from the day of its rendition, the same as if such judgment had been rendered in the State circuit court of said county? Or does the Missouri statute (sec. 1554, R. S. Mo., 1919) permitting the filing of transcripts of the judgments of Federal district courts in the office of the clerk of the State circuit court and providing that any such judgment shall become a lien from the *time of so filing such transcript* (but making no such limitation on the liens of judgments of the State circuit court of that county) deprive the Federal judgment of any lien whatever unless and until such transcript is so filed?

The petitioner here claims title to the real estate in controversy, asserting that such Federal judgment was a lien on such real estate from the date of its rendition, while the respondent contended below that such judgment was not a lien, no transcript thereof having been so filed. If such judgment was a lien, then the petitioner's title is conceded to be

superior. Otherwise the respondent has the superior title to the land in controversy.

The Supreme Court of Missouri, by majority opinion (R., 34), reported in Rhea *vs.* Smith, 272 Southwestern Reporter, 964-967, held that the judgment was not a lien and that the purchase by the respondent from the judgment debtor after the rendition of the judgment was superior to the title acquired by petitioner by execution sales thereafter had under said judgment. In a dissenting opinion (R., 41) (272 Southwestern, 967-970) Judges Blair and Atwood held that the Federal judgment, the same as a judgment of the State circuit court of that county, was a lien on the land in controversy in that county from the date of its rendition, without the filing of a transcript, and accordingly held that the petitioner had the superior title. The petitioner, as will thus be seen, claims title to the land in controversy by virtue of a statute of the United States.

Statement of Facts.

The facts are not in dispute and are briefly stated in the majority opinion of the Supreme Court of Missouri (R., 34) thus:

> "Suit in two counts. The first to determine title to certain real estate in Jasper county, and the second in ejectment to recover possession of such real estate. There was judgment for the defendant in the trial court, and plaintiff appealed.
>
> "The facts are undisputed. One Blanche H. Whitlock was the common source of title, and January 10, 1921, owned the property in dispute. On that day a judgment in a certain cause, in which she was plaintiff, pending in the United States District Court for

the Southern Division of the Western District of Missouri, at Joplin, was dismissed, and the cost of the case adjudged against her in the sum of $8,890.20. No transcript of this judgment was ever filed in the office of the clerk of the circuit court of Jasper County.

"On April 5, 1921, Blanche Whitlock conveyed the property in dispute to the defendant, Thomas C. Smith, for a consideration of $5,000, of which $2,800 was paid in cash, the purchaser assuming a mortgage on the premises for the balance. On July 22, 1921, execution was issued upon the judgment, and, by virtue of that execution, the United States marshal sold for $200 to the plaintiff Rhea, a portion of the property in dispute, and by marshal's deed conveyed it to him.

"On December —, 1921, another execution was issued on the judgment, under which the marshal sold the remainder of the land in dispute. It was purchased by the plaintiff for $25, and conveyance made to him.

"It is claimed by appellant that the judgment of the federal court was a lien on the real estate from its rendition; that he acquired title through the execution sales, and therefore his title was superior to any title acquired by subsequent conveyance of the judgment debtor. Respondent claims that in the absence of a transcript of the same, filed in the office of the clerk of the circuit court of that county, the judgment of the federal court was not a lien, and that the conveyance to respondent, prior to the execution sales, passed good title."

Reasons for the Allowance of the Writ.

1. The question presented by this petition, viz., whether or not the Congress has so legislated with reference to liens

of judgments of the United States district courts that the States may by legislation limit and postpone the liens of judgments of such courts without placing a similar limitation on the liens of judgments of the State courts of general jurisdiction, is of grave importance in every part of this Union.

2. If the decision of the Missouri Supreme Court in question is permitted to stand, it will materially affect and greatly subvert the judicial power of the Union. It will place suitors in the State courts in a much better position than in the Federal courts.

3. The Missouri Supreme Court has in its opinion in question decided a Federal question of substance and great importance not heretofore directly determined by this court, and the decision is not in harmony with the trend of decisions of this court rendered previous to the passage of the Act of Congress of August 1, 1888, relating to the liens of judgments of Federal district courts.

4. A decision by this court of the important question involved is necessary for the security of real-estate titles throughout the Union.

5. The said Supreme Court of Missouri is the highest court of said State in which a decision of the question involved could be had.

BRIEF IN SUPPORT OF PETITION.

I.

This Court Has Jurisdiction.

Petitioner claims title to the real estate in controversy, basing his right upon the Act of Congress of August 1, 1888, section 1, chapter 729, relating to liens of judgments of Federal district courts. This right was denied him by the State Supreme Court. Therefore this court has undoubted jurisdiction on certiorari.

Section 237 (*b*) of the Judicial Code as amended by the Act of February 13, 1925.

Talbot *vs.* First National Bank of Sioux City, 185 U. S., 172.

II.

Judgments of Federal District Courts in Missouri Have Same Liens in Counties Where Rendered as Judgments of State Circuit Courts.

Under the Missouri statutes (sections 1555, 1556, Revised Statutes of Missouri, 1919) judgments in Missouri State circuit courts (they being the courts of general jurisdiction in said State) are made liens on real estate of the debtor situate in the county where the judgments are rendered. This lien takes effect from the date of rendition of the judgment without any requirement for registering, recording, docketing, indexing, or anything to be done in a particular manner or place. Therefore, under section 1 of the Act of Congress of

August 1, 1888, chapter 729, similar liens under similar conditions must be accorded to Federal district court judgments.

Sections 1555 and 1556 of the Revised Statutes of Missouri, 1919, are as follows:

> "SEC. 1555. Lien in Courts of Record Generally.—Judgments and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held.
>
> "SEC. 1556. The Commencement, Extent, and Duration of Lien.—The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment, and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered."

The section 1, chapter 729, of Act of Congress is as follows:

> "SEC. 1. Judgments and decrees rendered in a (circuit or) district court of the United States within any state, shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state; *provided*, that whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in

> the state of Louisiana before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state."

It will be noted from a reading of the two sections of the Missouri statute above quoted that the laws of that State do not "require a judgment or decree of a State court to be registered, recorded, docketed, indexed, or any other thing to be done in a particular manner or in a certain office or county before a lien shall attach." Therefore the proviso in section 1 of the Act of Congress in question does not and never did apply to judgments rendered either in the State or Federal courts of Missouri. That part of section 1 preceding the proviso is the only part applicable in Missouri.

Under the mandatory provisions of section 1 of this act, Federal district court judgments "shall be liens on property throughout such State in the *same manner* and to the *same extent* and *under the same conditions only* as if such judgments had been rendered by a court of general jurisdiction of such State."

If, therefore, the Act of Congress is supreme and of itself invests in the Federal court judgments the same lien as is accorded to State circuit court judgments by the Missouri statute, then it follows that the judgment in question must be held a lien on the real estate in controversy.

The majority opinion of the Supreme Court of Missouri holds in effect that section 1 of the Act of Congress in ques-

tion is modified by section 1554, Revised Statutes of Missouri, 1919, reading as follows:

> "SEC. 1554. Lien of Judgment in Supreme Court, Courts of Appeals, and Federal Courts in this State.—Judgments and decrees obtained in the supreme court, in any United States district or circuit court held within this state, in the Kansas City court of appeals or the St. Louis court of appeals, shall, upon the filing of a transcript thereof in the office of the clerk of any circuit court, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed."

It will be noted that by this section the provisions for filing transcripts of Federal district court judgments appear in the same section providing for such transcripts of judgments of the Supreme Court and courts of appeal of that State. It is not contended by anyone that the State courts named in this section are courts of general jurisdiction. It is agreed on all hands that their jurisdiction is appellate and limited.

The conditions under which liens are by this statute accorded to judgments of these State appellate courts are not the standard specified in the Act of Congress by which to determine the commencement, etc., of liens of judgments of the Federal district courts.

It is submitted that this section of the Missouri statute can have no application and does not have the effect of depriving the Federal judgment of its lien, in the county where rendered, by attaching a condition subsequent to the effect, that after the rendition of the judgment a transcript thereof must be filed in the office of the clerk of the State circuit court.

This would be in direct conflict with section 1 of the Act of Congress in question.

The argument of the majority opinion that it would take but a short time to transcribe a judgment of the Federal court and file it with the clerk of the State court on the day of its rendition and thus put it on par with the judgment of the State court rendered on the same day is, we submit, wholly unsound. If the State statute in question can thus annex a limitation to the taking effect of the lien of a Federal court judgment by requiring the performance of some act subsequent to its rendition not required of judgments of the State circuit court, then the State statute and not the Federal statute is supreme.

III.

The majority opinion places much stress on the fact that as originally enacted the Act of August 1, 1888, contained three sections, and that the amendments from time to time of section 3 and the ultimate repeal of that section have an important bearing on the construction of section 1.

Section 1 of the act has never been amended. Section 2 of the act has likewise remained in its original form untouched by any amendment. It reads as follows:

> "SEC. 2. The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public."

Section 3 of the act as originally enacted was as follows:

> "SEC. 3. Nothing herein shall be construed to require the docketing of a judgment or decree of a

> United States court, or the filing of a transcript thereof, in any State office within the same county or parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county."

It was amended by Act of March 2, 1895, c. 180, 28 Stat., 814, by some verbal changes and by adding at the end thereof the further clause:

> "If the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

> Said section 3 was repealed by Act of Aug. 17, 1912, c. 300, 37 Stat. 311, and the amendatory act, Act of March 2, 1895, c. 180, was repealed by Act of Aug. 23, 1916, c. 229, Sec. 1, 39 Stat. Section 2 of said Act of Aug. 23, 1916, c. 229, 39 Stat., provided that the act was to take effect January 1, 1917.

As originally enacted, section 3 was in conflict with section 1 of the act in those States where judgments of the State courts of general jurisdiction were not liens until they had been recorded or enrolled or docketed at some particular place. The Federal judgment took effect in such case prior to the taking effect of the State court judgment, which was a discrimination in favor of the Federal court judgment. The subsequent amendment and final repeal of section 3 left section 1 of the act in full force and had the effect of putting the Federal and State court judgments on a footing of absolute equality as to time and manner of origin, etc., of liens.

IV.

The majority and minority opinions of the Supreme Court of Missouri (Rhea *vs.* Smith, 272 S. W., 964) fully cover the contentions of the contending parties, and we respectfully refer this court to these opinions. We beg to submit that the reasoning given in the dissenting opinion by Judges Blair and Atwood is sound and in harmony with the underlying principles involved, and that this dissenting opinion should, in substance, be adopted as the opinion of this court.

It is respectfully submitted, therefore, that a writ of certiorari should be issued as prayed.

THOMAS HACKNEY,
Attorney for Petitioner.

KANSAS CITY, MISSOURI,
August, 1925.

Office Supreme Court, U. S.
FILED
APR 26 1926
WM. R. STANSBURY
CLERK

No. [redacted] 199

In the Supreme Court of the United States

OCTOBER TERM 1925.

WILLIAM A. RHEA, PETITIONER,

VS.

THOMAS C. SMITH, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

(31,409.)

BRIEF FOR PETITIONER.

THOMAS HACKNEY,
Counsel for Petitioner.

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No. 686.

In the Supreme Court of the United States

OCTOBER TERM 1925.

WILLIAM A. RHEA, PETITIONER,

VS.

THOMAS C. SMITH, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR PETITIONER.

The opinion of the Supreme Court of Missouri (R. 18) is not yet officially reported in the state reports, but is reported in *Rhea* v. *Smith*, 272 S. W. Rep. 964-970.

Grounds of Jurisdiction of This Court.

On Oct. 19, 1925 (R. 30), this court granted the petition for a writ of certiorari to the Supreme Court of the State of Missouri to bring up to this court for review the record in the case lately pending in the Supreme Court of Missouri, entitled "William A. Rhea, Appellant vs. Thomas C. Smith, Respondent," petitioner here being the appellant therein.

(1) The judgment of the State Supreme Court was rendered April 13, 1925 (R. 18), and became final on the overruling of appellant's motion for rehearing in that court on May 23, 1925 (R. 30). A duly certified copy of the entire record in said cause, and the petition for writ of certiorari were filed in the office of the clerk of this court August 17, 1925, and due notice given to the respondent of the presentation of the petition for certiorari on the first day of the October 1925 Term of this court.

(2) The petitioner claims title to the real estate in controversy situate in Jasper County, Missouri, by virtue of two execution sales under a judgment of the United States District Court rendered at Joplin in said County, Jan. 10, 1921, and claims that under the Act of Congress, August 1, 1888, C. 729, Sec. 1, 25 Stat. 357 relating to the liens of judgments of Federal District Courts such judgment was a lien on the real estate of the judgment debtor situate in that county from the day of its rendition, the same as if such judgment had been rendered in the state Circuit Court of that county. This claim was made in the trial court in each of the three requested declarations of law asked by plaintiff which were refused (R. 15). The question of whether or not such judgment was a lien was the sole question presented to the State Supreme Court (R. 18-19), and the decision of that court was adverse to such claim (R. 24). The Missouri Supreme Court held in effect that section 1 of the Act of Congress in question is modified by Sec. 1554 R. S. Mo. 1919 which permits the filing of transcripts of Federal Court judg-

ments in the office of the clerk of the State Circuit Court, and provides that the lien of such judgment shall commence from the date of filing of the transcript.

(3) The jurisdiction of this court is invoked under Sec. 237 (b) of the Judicial Code as amended by the Act of Congress Feb. 13, 1925, (43 Stat. ....), providing for review by certiorari of the final judgment of the highest court of the state where is drawn in question the validity of a statute of the United States; and where is drawn in question the validity of the statute of the state on the ground of its being repugnant to the laws of the United States, and also where any title, right, privilege or immunity is especially set up or claimed by either party under any statute of the United States. The jurisdiction of this court is therefore undoubted as has been frequently held, particularly in

Cook v. *Avery*, 147 U. S. 375.
Talbot v. *First National Bank of Sioux City*, 185 U. S. 172.
Crescent City etc. Co. v. *Butchers Union etc. Co.*, 120 U. S. 141.

STATEMENT.

This action was originally instituted in the Circuit Court of Jasper County, Missouri, the petitioner here being the plaintiff, while the respondent here was the defendant in that action.

The petition contained two counts, the first to determine title to certain real estate in Jasper County, Missouri, and the second in ejectment to recover possession of such real estate (R. 2).

There was a judgment for defendant in the trial court (R. 1), and the plaintiff appealed to the Supreme Court of Missouri (R. 1).

The facts are not in dispute, and are briefly stated in the majority opinion of the said Supreme Court (R. 18) as follows:

> "Suit in two counts. The first to determine title to certain real estate in Jasper County, and the second in ejectment to recover possession of such real estate. There was judgment for the defendant in the trial court, and he appealed.
>
> The facts are undisputed. One Blanche H. Whitlock was the common source of title, and January 10, 1921, owned the property in dispute. On that day a judgment in a certain cause in which she was plaintiff, pending in the United States District Court for the Southern Division of the Western District of Missouri, at Joplin, was dismissed and the cost of the case adjudged against her in the sum of $8,890.20. No transcript of this judgment was ever filed in the office of the Clerk of the Circuit Court of Jasper County.
>
> On April 5, 1921, Blanche Whitlock conveyed the property in dispute to the defendant, Thomas

C. Smith, for a consideration of $5,000, of which $2,800 was paid in cash, the purchaser assuming a mortgage on the premises for the balance.

On July 22 1921, execution was issued upon the judgment and by virtue of that execution the United States Marshal sold for $200 to the plaintiff Rhea, a portion of the property in dispute, and by marshal's deed conveyed it to him.

On December ...., 1921, another execution was issued on the judgment under which the marshal sold the remainder of the land in dispute. It was purchased by the plaintiff for $25.00, and conveyance made to him.

It is claimed by appellant that the judgment of the Federal Court was a lien on the real estate from its rendition, that he acquired title through the execution sales and therefore his title was superior to any title acquired by subsequent conveyance of the judgment debtor. Respondent claims that in the absence of a transcript of the same, filed in the office of the Clerk of the Circuit Court of that county, the judgment of the Federal Court was not a lien, and that the conveyance to respondent prior to the execution sales, passed good title."

SPECIFICATION OF ERRORS.

I.

The Supreme Court of Missouri erred in holding that the judgment of the Federal District Court at Joplin was not a lien on the real estate of the judgment debtor in the county where rendered the same as if such judgment had been rendered in the state circuit court of that county.

II.

The Supreme Court of Missouri erred in holding in effect that Section 1554 Revised Statutes of Missouri 1919 deprived the Federal Court judgment of any lien unless and until a transcript thereof was filed with the clerk of the state circuit court of Jasper County, where the federal judgment was rendered.

III.

The Supreme Court of Missouri erred in holding that the repeal of section 3 of the Act of Congress, August 1, 1888, had the effect of destroying the equality of liens of judgments of the Federal District Courts and the state circuit courts in the counties where rendered.

POINTS AND AUTHORITIES.

I.

Under the Missouri statute if the judgment in question had been rendered by the State Circuit Court of Jasper County it would have been a lien on the real estate in controversy from date of rendition. Therefore under Section 1 of the Act of Congress relating to judgment liens the judgment of the Federal Court at Joplin was a lien on such real estate from the date of its rendition.

Secs. 1555, 1556 R. S. Mo. 1919.
Act of Cong. Aug. 1, 1888, Sec. 1 Chap. 729, 25 Stat. 357.
Massingill v. *Downs*, 7 Howard 758.
Dartmouth Sav. Bank v. *Bates*, 44 Fed. 546.
Lineker v. *Dillon*, 275 Fed. 460, 472.
Dermott v. *Carter*, 109 Mo. 21.
Metcalf v. *Watertown*, 153 U. S. 671.

II.

The Missouri legislature while investing judgments of the State Circuit Court of Jasper County with liens on real estate in that county from date of rendition, had no power by the passage of Section 1554 R. S. Mo. 1919 to deprive the judgment of the Federal District Court at Joplin of any lien until a transcript thereof was filed with the clerk of the State Circuit Court.

The Act of Congress prevails over the state statutes.

1 Black on Judgments (1st Ed.) Sec. 414, p. 508.
Massingill v. *Downs*, 7 Howard 758.
Act of Cong. Aug. 1, 1888, C. 729, 25 Stat. 357.

III.

The repeal by Congress of Section 3 of the original Act of August 1, 1888, had the effect of making uniform throughout the Union, instead of destroying, the equality of liens provided for in Section 1 of that Act between judgments of the Federal District Courts and those of state courts of general jurisdiction.

ARGUMENT.

I.

The federal court judgment rendered at Joplin was a lien from date of rendition on land of the judgment debtor in that county by reason of the fact that the state statute accorded such liens to judgments of the state circuit court of that county. The Act of Congress relating to judgment liens in federal district courts puts the federal court judgment lien on equality in every respect with the lien of the judgment of the state circuit court in the county where rendered.

The judgment in question was rendered in the United States District Court for the Southwestern Division of the Western District of Missouri at Joplin in Jasper County, Missouri, on January 10, 1921 (R. 5).

Missouri Statutes Governing Liens of Judgments.

At the time of the rendition of this judgment the Missouri Statutes governing liens of judgments of her state courts (except appellate courts) were as follows.

> Sec. 1555. Lien in courts of record, generally. Judgments and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered situate in the county for which the court is held.
>
> R. S. Mo. 1919.
>
> Sec. 1556. The commencement, extent and duration of lien. The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof as to that which was owned when the judgment or decree was

rendered. Such liens shall commence on the day of the rendition of the judgment, and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered.

R. S. Mo. 1919.

Sec. 1593. Transcript of judgment a lien in another county, when. Judgments and decrees obtained in any court of record in this state shall, upon the filing of a transcript thereof in the office of the clerk of the Circuit Court of any other county, be a lien upon the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

R. S. Mo. 1919.

Section 2850, R. S. Mo. 1919, provides for the filing of the transcripts of judgments of justices of the peace with the clerk of the Circuit Court of the county and for the recordation of the same. Section 2851, R. S. Mo. 1919, provides that every such judgment of a justice of the peace "from the time of filing the transcript shall have the same lien on the real estate of the defendant in the county as is given to judgments of Circuit Courts."

The only provision of the state statute relating to judgments of the Federal courts is found in Section 1554 R. S. Mo. 1919, which, previous to amendment in the revision of 1889, related only to judgments of the State Supreme Court and State Courts of Appeal. That section as then amended is as follows:

> Sec. 1554. Lien of judgment in Supreme Court, Courts of Appeals and Federal Courts in this state. Judgments and decrees obtained in the Supreme Court, in any United States District or Circuit Court held within this state in the Kansas City Court of Appeals, or St. Louis Court of Appeals shall, upon the filing of a transcript thereof in the office of the clerk of any Circuit Court, be a lien on the real estate of the person against whom such judgment or decree is rendered, situated in the county in which such transcript is filed.
>
> R. S. Mo. 1919.

The Act of Congress relating to liens of judgments of Federal District Courts in force at the time of the rendition of the judgment in question consisted of Sections 1 and 2 of the Act of August 1, 1888, 25 Stat. 357, reading as follows:

> Sec. 1. Judgments and decrees rendered in a (Circuit or) District Court of the United States within any state shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state: Provided, that whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana, before the lien shall attach this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States Courts to be registered, recorded, docketed, indexed or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state.

> Sec. 2. The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall be at all times open to the inspection and examination of the public.

By Section 1555, R. S. Mo. 1919, it is provided that judgments rendered by any court of record "shall be a lien on the real estate of the person against whom they are rendered, situate in the *county* for which the court is held."

By section 1556, R. S. Mo. 1919, it is provided that "such liens shall commence on the *day of the rendition* of the judgment, etc."

In order to make the judgment a lien outside the county where rendered, Section 1593, R. S. Mo. 1919, requires a transcript thereof to be filed in the office of the clerk of the Circuit Court of any other county where a lien is sought to be had.

By Section 1 of the Act of Congress of August 1, 1888, *supra*, judgments of Federal District Courts within any state are declared to be liens on real estate "in the same *manner* and to the same *extent* and under the same *conditions only* as if such judgments and decrees had been rendered by a court of *general jurisdiction* of such state.

The Circuit Court is the state court of general jurisdiction in Missouri.

> "Courts of general jurisdiction are courts which take cognizance of all causes, civil or criminal, of a particular nature."
> 15 C. J. Sec. 2, p. 718.

> "General jurisdiction is such as extends to all controversies which may be brought before a court within the legal bounds of rights and remedies."
>
> 15 C. J. Sec. 14, p. 726.

The "court of general jurisdiction of such state" referred to in Section 1 of the Act of Congress, *supra*, is in Missouri the State Circuit Court. This by virtue of Section 22, Article VI of the Missouri Constitution, which reads as follows:

> Sec. 22. The Circuit Court shall have jurisdiction over all criminal cases not otherwise provided for by law; exclusi original jurisdiction in all civil cases not otherwise provided for, and such concurrent jurisdiction with and appellate jurisdiction from inferior tribunals and justices of the peace as is or may be provided by law. It shall hold its terms at such times and places in each county as may be by law directed, but at least two terms may be held every year in each county.

Section 24 of the same article provides that the state shall be divided into convenient circuits of contiguous counties and that one circuit judge shall be elected for each circuit. There are now 36 judicial circuits in the state.

> "The circuit court is a court of general jurisdiction."
>
> *State* v. *Eyermann*, 172 Mo. 294, 303.

> "The circuit court is a superior court of general jurisdiction."
>
> *Davidson* v. *Schmidt*, 256 Mo. 18, 19.

The majority opinion does not dispute the proposition that the circuit court is in Missouri the only state court of general jursdiction (R. 22).

An examination of Sections 1555 and 1556 of the state statute, *supra,* will disclose the fact that the lien given by these sections takes effect immediately without any requirement that the judgment be theretofore or thereafter "registered, recorded, docketed, indexed, or any other thing to be done in a particular manner or in a certain office or county." Under the state statute where the judgment creditor wishes to obtain a lien on the real estate of the judgment debtor in some county other than the county in which the judgment is rendered it is provided by Section 1593, *supra,* that he may do so by filing a transcript thereof with the clerk of the circuit court of the county where the extended lien is sought. This he may do in as many counties in the state as he may see fit.

If, therefore, Congress, by Section 1 of the Act of August 1, 1888, intended to invest judgments of the federal district courts with the same liens as judgments of the state circuit courts in Missouri it must needs follow that the judgment in question was a lien on the real estate in controversy situated in Jasper County, from the day of its rendition; and that a transcript of this judgment would be required only in case the judgment creditor sought to extend his lien to some other county than the one in which Joplin is situate. To hold that the federal judgment was not a lien in the county where rendered while state circuit court judgments were more favored in that respect would be to ignore the plain mandate of Congress; and would, as was well said by Mr. Justice McLean in *Massingill* v. *Downs,* 7 Howard, 758,

> "* * * materially affect and in some degree subvert the judicial power of the Union. It would place suitors in the state courts in a much better condition than in the federal courts."

II.

The Missouri Legislature could not by the passage of Section 1554 deprive the federal court judgment of a lien until a transcript thereof was filed with the clerk of the State Circuit Court of Jasper County. The right of this judgment to a lien is conferred by the Act of Congress and does not have its origin in this section of the state statute. If there be a conflict between the two statutes, then the Act of Congress must prevail over the state statute.

The majority opinion below, after referring to the fact that under Section 1554 of the state statute judgments of the state appellate courts are not liens upon rendition but must be transcripted and filed locally to become liens, and that this section was the only one relating to federal judgments said (R. 20):

> "In that respect district and circuit courts are put on the same basis as state courts having a territorial jurisdiction more than one county."

The writer of that opinion here overlooked the fact that Congress had the *sole* and *exclusive* power to determine and did determine the *basis* on which the judgments of federal courts should be put. The state legislature had no such power. Congress specified as its *basis* the state court of "general jurisdiction," a trial court having jurisdiction most nearly like that of the federal district (and then circuit) courts. The

state could not change the basis thus fixed by Congress. Congress was not concerned with the territorial jurisdiction of the state court specified by it, but was concerned only, with the nature of its jurisdiction. It was not concerned with the territorial limits within which the designated state court might exercise its jurisdiction. The basis or standard thus fixed by Congress was overlooked by the writer of the majority opinion. Consequently he fell into the error of looking to Section 1554 instead of the Act of Congress as the *source* of the *right* to a lien of the federal court judgment.

When the legislature of Missouri undertook the task in 1889 of making provision for transcripting federal court judgments and of filing these transcripts with the clerks of their state circuit courts in counties where the judgment was not already a lien, it should have selected what is now Section 1593 instead of Section 1554 as the proper place for the insertion of this amendment. Had the legislature done so, it would have been in recognition of the right of Congress to *create* the lien in conformity with judgments of state circuit courts and would have made provision at the proper place for extending this lien to other counties than the county where the federal judgment was rendered. This would have put the state statute in perfect harmony with the Act of Congress. Had this been done the opinion below would doubtless have been in favor of and not against petitioner's claim of title.

The Missouri legislature had full power to restrict the liens of judgments of its state supreme court and

state appellate courts and to require as a condition precedent to the commencement of such liens that a transcript of the judgment must be filed in any county where a lien was sought to be had on the judgment debtor's real estate. Not so, however, as to the federal court judgments.

If as interpreted by the majority opinion, the legislature attempted to put the judgments of the federal district courts in the same category as judgments of the state appellate courts and thus deprive the federal judgment of its lien in the county where rendered, the legislature exceeded its authority. If the legislature had the power to deprive the federal court judgment of its lien until a transcript thereof was filed, it could postpone this lien indefinitely and without limitation.

Looking again to Section 1555 of the Missouri Statutes *supra*, we find that it provides that judgments rendered by "any court of record" shall be liens in the county where rendered.

The circuit Court of Jasper County, Missouri, was not the only state court of record in that county. The probate court was likewise a court of record, under Section 34, Article VI of the state constitution, which provides as follows:

> Sec. 34. The general assembly shall establish in each county a probate court which shall be a court of record and consist of one judge who shall be elected. Said court shall have jurisdiction over all matters pertaining to probate business, etc."

The county court was also a court of record. Section 36, Article VI the state constitution provides as follows:

> Sec. 36. "In each county there shall be a county court which shall be a court of record and shall have jurisdiction to transact all county and such other business as may be prescribed by law."

Within the limits of their respective jurisdictions probate courts and county courts in Missouri frequently have occasion to render judgments for the recovery of money. These judgments are by Section 1555, *supra*, made liens on the real estate of the judgment debtor in the county and this lien by Section 1556, *supra*, is effective from the day of the rendition of the judgment, the same as if rendered in the state circuit court.

Considering again the question of what courts are held in Jasper County, Missouri, we find that there is a federal district court held at Joplin, being the Southwestern Division of the Western District of Missouri, that division embracing the eight counties of Barry, Barton, Jasper, Lawrence, McDonald, Newton, Stone and Vernon (Section 91 of Judicial Code).

In The L. B. X. 88, Fed. 290, 295, Judge Adams, one of the ablest judges who ever adorned the federal bench of Missouri, after considering the various Acts of Congress relating to federal courts in Missouri, said:

> "It is manifest that Congress never intended these subdivisions of a district as mere convenient arrangements for holding the courts of the dis-

> trict. This appears from the specific and accurate language employed which is entirely inconsistent with such intent and also from the language employed in other acts creating courts for mere convenience."

The distinctive character of each of these divisions mentioned by Judge Adams, *supra,* was later recognized and clearly established by Section 53 of the Judicial Code. The language, therefore, of the majority opinion (R. 22) to the effect that the federal court

> "may hear a case in Jasper County and render judgment in the case in Greene County, or Jackson County, or, as sometimes happens, the court may hear part of the evidence in one county and the remainder in another, and render judgment in a third and pass upon a motion for re-hearing in a fourth," is inaccurate, save only in bankruptcy cases.

In addition to the Federal Court at Joplin, there are as has been shown, three state courts of record, viz.: the circuit court, probate court and county court. There are also justice of the peace courts, not courts of record. The judgments of these latter courts become liens on real estate on filing of transcripts in the office of the clerk of the state circuit court.

Now the effect of the majority opinion below is to place the judgments of the Federal District Court at Joplin on a lower plane than the judgments of either the state circuit court, probate court or county court of Jasper County and to put them on equality only with *judgments of justices of the peace* of that county. *Hinc illae lacrimae.*

Again it is said in the majority opinion (R. 22):

> "Evidently it was the policy of the law to have one definite place where a person might go to ascertain whether there are any judgment liens affecting real estate in which he might be interested; he would not have to go to several places."

As will be seen under point III of this argument the statutes in many states have provided one place at which judgments of every state court must be docketed, or registered in some form, before becoming liens. In such states Congress evidently intended by Sec. 1 to require such docketing or registration of the judgments of Federal District Courts therein. This purpose was not accomplished however until the repeal of section 3 of that Act. But as has been previously stated there is not any *one place* or any *one office* in Jasper County, Missouri, where *all* the judgments of the state courts of record which are liens on real estate in the county may be found. The records of the probate court and of the county court, each a court of record, are kept separate and distinct from those of the state circuit court. Therefore, a person wishing to determine whether or not there are any state court judgment liens against a debtor's real estate must examine not only the records of the state circuit courts, but likewise those in the probate and county courts.

Again in the majority opinion it is said (R. 23):

> "The alleged discrimination in favor of a State Court against a Federal Court, sitting in the same county, is only apparent. The provision that the lien of a judgment shall begin from its rendition means on the same day of its rendition.

> It would *take but a short time* to transcribe a judgment of the Federal Court and file it with the Clerk of the State Court on the day of its rendition, and *thus* put it *on par* with the judgment of the State Court rendered on the same day." (Italics ours.)

It is submitted that the very language of the majority opinion discloses the fallacy of its ruling. If, as is conceded, the state court judgment is a lien without transcripting, docketing, or recording elsewhere than on the journal entry evidencing the judgment, then the same status must be given to the federal court judgment; otherwise the latter is *inferior* to the former. To say that it would take but a *short time* to transcript the federal judgment and file it in the state circuit court and thus comply with requirements of section 1554 of the state statute is no argument in favor of injecting into the federal statute any such requirement. It would manifestly take *some* time to have the federal judgment written out and transcripted. It would likewise, of necessity, take some *more* time to go from the federal court to the state court. Lapse of that time, however short, might well be fatal to the lien of the federal judgment. It can well be seen that both courts might be sitting at the same time and that judgments might be rendered in each court just before the conclusion of the business of the day, that immediately thereafter both courts would adjourn and their respective clerk's offices be closed. In such case it might not be possible for the suitor in the federal court to secure a transcript of his judgment and file the same in the state circuit court until the day fol-

lowing. The state judgment would be a lien from rendition and therefore one day ahead of the federal judgment. The two judgments can be put on equality only by according each a lien from the day of rendition, without regard to the performance of any condition subsequent.

Perfect harmony between Section 1554 of the state statute and Section 1 of the Act of Congress can be had only by construing the former as not in any manner restricting the right to or commencement of the lien conferred by the latter, but as making provision for the extension of this lien to other counties than the one where the federal judgment is rendered. Such is the construction given in the dissenting opinion below. Construing Section 1 of the Act of Congress it is there said (R. 27):

> "Taking by itself the language of that part of section 1 of the federal act preceding the proviso, I think there can be no doubt that the judgment we are considering became a lien upon the property here involved from the day of its rendition. The language 'in the same manner and to the same extent and under the same conditions' is broad enough to make a federal court judgment a lien in the county where it is rendered without filing a transcript thereof, *if a judgment of the state court of general jurisdiction constitutes such lien.* 'In the same manner' and 'under the same conditions' can mean nothing else. 'To the same extent' may refer to the kind of property to which such lien attaches or to the territorial extent of the lien or to both. If a state makes its judgments a lien on real estate only, then federal judgments become liens on such property only. If such lien extends only to the coun-

ty, then the lien of the federal court judgment is so limited. The status of the lien of a judgment of the state court of general jurisdiction fixes the status of the lien of federal court judgments *in every respect*. Such is the only meaning which can fairly be given to section 1 of the federal act."

Further on in this dissenting opinion construing section 1554, it is said (R. 29):

"The majority opinion, as does respondent, lays much stress upon section 1554 of our statute, which provides that judgments obtained in the supreme court, the court of appeals and federal trial courts shall be liens in *any* county in the state wherein a transcript thereof shall be filed. Apparently this section is one making provision for a lien broader in territorial application than the lien attaching upon mere rendition of the judgment. It apparently has no reference to the latter sort of lien.

"It required no action upon the part of the Missouri Legislature to give a lien to a judgment of the federal district court. That is the exclusive prerogative of Congress. Therefore, our legislature, in enacting section 1554, undertook to do nothing more than to put federal court judgments upon an equality with state court judgments by authorizing the filing of transcripts thereof in any county of the state and providing for a lien therein upon such filing.

"Section 1554 is the conformity statute of Missouri without the enactment of which the act of Congress of 1888 would have no application whatever to federal court judgments rendered in this state. If that section be construed by us as requiring the filing of a transcript of a federal court judgment in the office of the clerk of the circuit court of the county wherein such federal court judgment is rendered, then Missouri has

passed no adequate conformity law and the judgment of appellant must be held to be a lien throughout the territorial jurisdiction of the federal district court which rendered it, including Jasper County."

III.

The repeal by Congress of Section 3 of the Act of August 1, 1888, did not destroy the equality of liens of federal and state court judgments conferred by Section 1 of said Act.

As originally enacted the Act of Congress, August 1, 1888, consisted of three sections; sections 1 and 2 have been herein previously set out in full. As originally enacted, section 3 of that act was as follows:

> "Nothing herein shall be construed to require the docketing of a judgment or decree of a United States court or the filing of a transcript thereof, in any state office within the same county or parish in the State of Louisiana, in which the judgment or decree is rendered in order that such judgment or decree may be a lien upon any property within such county."

This section was amended by the Act of March 2, 1895, c. 180, 28 Stat. 814, making some verbal changes and by adding to the end thereof the further clause:

> "If the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

It will be noted that section 91 of the Judicial Code and the previous acts of Congress relating to the southwestern division of the Western District of Mis-

souri provided for the maintenance at all times of a clerk's office in charge of himself or a deputy at Joplin, as well as in each of the other divisions.

Said section 3 as originally enacted was repealed by the Act of August 17, 1912, c. 300. 37 Stat. 311, without reference to the amendatory act of March 2, 1895. This latter amendatory act was in turn repealed by the Act of August 23, 1916, c. 229, sec. 1, 39 Stat.

.....

Section 2 of said act of August 23, 1916, provided that the act was to take effect January 1, 1917.

The majority opinion below lays great stress on the repeal of section 3 of the act of August 1, 1888. In that opinion it is said (R. 21, 22):

> "The act of Congress must be construed according to its terms set out in sections 1 and 2; it must be construed with reference to the repeal of section 3, and some significance must be attached to the act of Congress in repealing that section. Without that section, transcripts of judgments of a federal court were required to be filed in the county records when transcripts of judgment in state courts were required to be so filed. Section 3 relieved a judgment creditor in the federal court from that requirement in a certain instance. The repeal of the section shows an intent to make that requirement."

In the dissenting opinion below in dealing with the repeal of section 3 of the act of August 1, 1888, it is well said (R. 28):

> "The provision that a federal court judgment should be a lien upon rendition in the county where such judgment was rendered without filing a transcript therein gave an advantage to

federal judgment creditors not possessed by judgment creditors in the courts of those states which require particular steps to be taken in addition to the mere rendition of a judgment before it becomes a lien in the county where rendered and section 3 tended to prevent the complete harmony and conformity aimed at in section 1. A very good and completely satisfying reason for repealing section 3 is found in the evident purpose of Congress to put federal judgments on exactly the same footing as state judgments. The enactment of section 3 failed to accomplish this in all cases and its repeal did effectually accomplish such purpose in all cases and in every state. It is inconceivable to me, as it is contended in respondent's brief, that, by such repeal, Congress intended that judgments of federal courts should not become a lien in the county where rendered unless and until a transcript thereof is filed in the circuit clerk's office, while the state court judgment becomes a lien therein without such procedure. Such a purpose would be in hopeless conflict with the purpose expressed in section 1."

Prior to the passage of the Act of August 1, 1888, *supra*, a judgment of the federal court in Missouri was held to be a lien from the time of its rendition on all real estate of the defendant throughout the judicial district; and when Missouri constituted but one judicial district, the lien was held to exist throughout the entire state.

Dermott v. *Carter*, 109 Mo. 21.

This decision of the Missouri Supreme Court was in harmony with the decisions of this court.

Metcalf v. *Watertown*, 153 U. S. 671, 678.

At the time of the passage by Congress of the act of August 1, 1888, judgment liens of state courts depended and still depend on a great variety of statutory conditions. In many of the older states, particularly in New England, judgments are not liens on real estate until the issuance of a writ of execution and the levy thereon by the officer executing this writ. This is also true in Kentucky and Michigan. In a majority of the states judgments become liens on real estate only after being recorded, indexed, docketed, enrolled or registered in some particular local office.

34 C. J., Sec. 885, p. 576.

In 1 Black on Judgments (1st Ed.), Sec. 404, p. 497, it is said:

> "It is a general statutory requisite that judgments shall be duly entered upon the docket before they can become liens upon the debtor's realty, at least as against subsequent purchasers in good faith."

And in section 405, page 498, the same author says:

> "In many of the states there is a further statutory requirement, designed for convenience and expedition in making searches, that the judgment be duly *indexed.*"

An examination of the statutes of the various states will disclose a very great variety of statutory requirements of things to be done before judgments become liens. For instance, in Alabama, under section 4156 Alabama Code 1907, before the judgment of any court can become a lien, a prescribed certificate

must be filed with the probate judge. In Louisiana under articles 3321, 3367 Merricks Rev. Code 1912, the judgment must be recorded in the mortgage office. In New York the judgment of every court must be filed with the county clerk and by him docketed (Secs. 509, 510 Civil Practice Act). In Colorado a transcript of the judgment must be filed with the county recorder (Sec. 3609 R. S. Colo. 1908). In Texas the judgment must be recorded and indexed on the judgment roll in the county clerk's office where deeds and mortgages are recorded. So in a majority of the states it will be found that the judgment does not become a lien upon rendition but only after being docketed, indexed, or registered at some particular place or in some particular office.

On the other hand, in many of the states, like Missouri, judgments of courts of record are by statute made liens on the debtor's real estate in the county from the date of rendition.

When Congress passed the act of August 1, 1888, the evident purpose expressed in section 1 of that act to put federal judgments on absolute equality as to liens with state judgments was destroyed by section 3 of that act in those states where the state judgments were not liens until levy on execution; also in those states where judgments were not liens upon rendition but became liens only after being docketed, enrolled, indexed, recorded or registered elsewhere. Therefore, as will be seen section 3 which made the federal court judgment a lien in the county where rendered from the date of rendition, in every state, put the federal court

judgment as to its lien ahead of the state court judgments in all those states. But by the repeal of section 3 the purpose of Congress to put the federal and state court judgments on absolute equality as to lien was fully effected.

In Missouri section 3 had no effect at any time to give the federal court judgments any priority over the state court judgments. Each, by the statute conferring its lien, was a lien on real estate of the judgment debtor in the county where rendered from the day of its rendition. There was no conflict in Missouri between the state and federal statutes while section 3 of the act of August 1, 1888, was in force. Manifestly its repeal by Congress did not alter in any respect the status of the lien of the federal court judgment in that state.

The decision of the circuit court of appeals of the fifth circuit in *Jackson Light and Traction Co.* v. *Newton,* 269 Fed. 223, much relied upon by the majority opinion is not in point. That case was controlled by the Mississippi statute which is wholly unlike the Missouri statute. Under section 819 of the Mississippi Code 1906 it is provided that a judgment shall not be a lien on any property of the defendant thereto unless the same be enrolled within twenty days from rendition in the judgment roll provided for by section 818.

The federal judgment was rendered on May 10, 1918, and was not enrolled on the judgment roll in the office of the clerk of the circuit court of Hinds County, Mississippi, until April 4, 1919, almost *eleven months*

after its rendition. A state court judgment in Mississippi not enrolled within twenty days from its rendition was not a lien and the federal court judgment not having been enrolled within the statutory period was properly declared no lien.

Some of the language of the learned judge who wrote that opinion is quite likely to be misunderstood except when considered carefully in connection with the Mississippi statute. Again the language on page 226 of that opinion with regard to there being no discrimination when the Mississippi statute *put* the federal judgment on a *par* with the judgments of the state supreme court indicates that the author, like the author of the majority opinion below, did not constantly bear in mind the fact that the right of the federal judgment to a lien flowed, not from the particular section of the statute of Mississippi under consideration, but did flow from and originated in section 1 of the act of Congress.

Giving effect therefore to the plain terms of section 1 of the act of Congress in question, it must be held that the judgment of the federal district court at Joplin was a lien on the real estate in controversy from the day of its rendition, just the same as if the judgment had been rendered in the state circuit court. In no other way could perfect equality of liens between the judgments of the two courts be accomplished.

It is respectfully submitted that the dissenting opinion in the instant case correctly interprets the state and federal statutes; that this opinion is in har-

mony with the underlying principles involved and should, in substance, be adopted as the opinion of this court.

The petitioner therefore prays that the judgment below be reversed.

Respectfully submitted,

THOMAS HACKNEY,
Counsel for Petitioner.

Kansas City, Missouri,
April 20, 1926.

Office Supreme Court, U. S.
FILED
JUN 15 1926
WM. R. STANSBURY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. [redacted]199

WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH, RESPONDENT.

RESPONDENT'S BRIEF

W. R. ROBERTSON,
Counsel for Respondent.

(31,409)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 686

WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH, RESPONDENT.

RESPONDENT'S BRIEF

STATEMENT OF CASE.

This case, Rhea v. Smith, 272 S. W. 946, 308 Mo. 422, involves the question of the rights of the Petitioner as purchaser of certain real estate sold under execution, issued from the U. S. District Court of the Southwestern Division of the Western District of Missouri, wherein Petitioner had obtained judgment against one Whitlock and others and under which execution he sold and bought (R. 14) said real estate of said Whitlock and his wife, but had failed to file a transcript of his judgment in the office of the Clerk of the Circuit Court of Jasper County, Missouri, wherein said real estate is situate, as provided by the Missouri Statutes, and a subsequent purchaser of said lands, without notice (R. 10). Two judgments, one in the Federal Court and one

in the State Court of Missouri, rendered and entered contemporaneously are not involved. Before we have any hypothesis upon which to build an adjudication on this latter question it is essential that we assume that there may, sometime in the future, arise a case in which a judgment of the Federal Court of the Southwestern Division of the Western District of Missouri, or of some other Federal Court in this State, will render and enter a judgment on the same day a judgment is rendered and entered in the Circuit Court of Jasper County, Missouri, or some other court similarly situated, a transcript of the former not being filed in the office of the Clerk of the Circuit Court of said County on that day.

The Act of Congress, relative to Federal Court liens, when enacted in 1888 (25 Stat. L. 357), reads as follows:

> Sec. 1. (LIEN OF JUDGMENTS OF UNITED STATES COURTS—WHEN TO BE RECORDED UNDER STATE LAWS.) That judgments and decrees rendered in a circuit or district court of the United States within any State, shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such State: *Provided,* That whenever the laws of any State require a judgment or decree of a State Court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such State shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State.

Sec. 2. (INDEXES OF JUDGMENT RECORDS TO BE KEPT BY CLERKS OF COURTS.) That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

Sec. 3. Nothing herein shall be construed to require the docketing of a judgment or decree of a United States Court, or the filing of a transcript thereof, in any State office within the same county or parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county.

In 1895 (28 Stat. L. 814) said section three was amended to read as follows:

Sec. 3. (DOCKETING IN STATE COURT, WHEN NOT REQUIRED.) That nothing herein shall be construed to require the docketing of a judgment or decree of a United States court, or the filing of a transcript thereof, in any State office within the same county or the same parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county, if the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish.

Section 3 of said Act, as amended, was repealed to take effect January 1, 1913 (37 Stat. L. 311).

In 1911 (Judicial Code, Section 91) Congress created the Southwestern Division of the Western District of Missouri, and provided for the holding of court at Joplin where

the Clerk should maintain an office in charge of himself or a deputy, to be kept open at all times for the transaction of the business of the court.

The Revised Statutes of the United States, Sections 562, 621, 622, 623, 624, 27 Stat. L. 13, 30 Stat. L. 836, 31 Stat. L. 249, 30 Stat. L. 1002, contained provisions for offices and records to be kept in various and distinct localities, many or all of which existed during the period when Congress enacted, amended and repealed said Section 3.

The Judicial Code, Sections 71, et seq., provides for more than one county in various districts for holding court and keeping records.

At the time of the litigation involved herein there was in full force and effect, as shown by the Revised Statutes of Missouri of 1919, Vol. 1, the following provisions:

> Sec. 1554. LIEN OF JUDGMENT IN SUPREME COURT, COURTS OF APPEALS AND FEDERAL COURTS IN THIS STATE. —Judgments and decrees obtained in the Supreme Court, in the United States district or circuit court held within this state, in the Kansas City court of appeals or the St. Louis court of appeals, shall, upon the filing of a transcript thereof in the office of the clerk of any circuit court, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.
>
> Sec. 1555. LIEN IN COURTS OF RECORD, GENERALLY. —Judgments and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held.
>
> Sec. 1556. THE COMMENCEMENT, EXTENT AND DURATION OF LIEN.—The lien of a judgment or decree shall extend as well to the real estate acquired after the

rendition thereof as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment, and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered.

Sec. 1580. CLERKS SHALL KEEP BOOK FOR DOCKETING JUDGMENTS.—The clerks of courts of record shall keep in their respective offices a well-bound book for entering therein an alphabetical docket of all judgments and decrees.

Sec. 1581. DOCKET SHALL CONTAIN WHAT ENTRIES.—They shall, during every term, or within thirty days thereafter, enter in such docket all final judgments and decrees rendered at such term in alphabetical order, by the name of the person against whom the judgment or decree was entered; and if the judgment or decree be against several persons, it shall be docketed in the name of each person against whom it was recovered, in the alphabetical order of their names, respectively.

Sec. 1582. FURTHER ENTRIES TO BE MADE IN DOCKET.—Such docket shall contain, in columns ruled for that purpose: First, the names of the parties; second, the date; third, the nature of the judgment or decree; fourth, the amount of the debt, damages and costs; fifth, the book and page in which it is entered; sixth, a column for entering a note of the satisfaction or other disposition thereof.

Sec. 1583. JUDGMENTS OF SUPREME COURT, ETC.—Transcripts of judgments or decrees of the Supreme

Court or either court of appeals or of any United States Court shall, as soon as they are filed in the office of the clerk of the circuit court or other inferior court, be entered in the said docket.

Sec. 1593. TRANSCRIPT OF JUDGMENT A LIEN IN ANOTHER COUNTY, WHEN.—Judgments and decrees obtained in any court of record in this state shall, upon the filing of a transcript thereof in the office of the clerk of the circuit court of any other county, be a lien upon the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

Sec. 2122. CLERK TO KEEP RECORD, ETC.—WHEN CLERK AN INTERESTED PARTY PROCESS TO BE ISSUED BY COUNTY CLERK.—Every clerk shall record the judgments, rules, orders and other proceedings of the court, and make a complete alphabetical index thereto; * * *."

Sections 1554 and 1583, *supra,* were first enacted in 1889 (Sections 6010 and 6039, R. S. 1889).

The Appellate Courts of Missouri have jurisdiction to "examine the record and award a new trial, reverse or affirm the judgment or decision of the Circuit Court, or give such judgment as such court ought to have given, as to them shall seem agreeable to law."

Sec. 1514, R. S. Mo., 1919;
State ex. rel. vs. Walbridge, 153 Mo., 194, 204.

Article VI of the constitution of the State of Missouri (pp. 116, 117, R. S. 1919) is as follows:

Sec. 1. JUDICIAL POWER, WHERE VESTED.—The judicial power of the State, as to matters of law and equity, except as in this Constitution otherwise provided, shall be vested in a Supreme Court, the St.

Louis Court of Appeals, circuit courts, criminal courts, probate courts, county courts and municipal corporation courts.

Sec. 2. SUPREME COURT, JURISDICTION OF.—The Supreme Court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under the restrictions and limitations in this Constitution provided.

Sec. 3. SUPREME COURT, SUPERINTENDING CONTROL OF—POWER TO ISSUE ORIGINAL WRITS.—The Supreme Court shall have a general superintending control over all inferior courts. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari and other original remedial writs, and to hear and determine the same.

Amendment of 1884 (p. 133, R. S. 1919), is as follows:

Sec. 1. ST. LOUIS COURT OF APPEALS, EXTENDED JURISDICTION—JUDGES.—The jurisdiction of the St. Louis Court of Appeals is hereby extended so as to be coextensive with 55 Counties and the City of St. Louis named.

Sec. 2. KANSAS CITY COURT OF APPEALS, JURISDICTION, TERMS, JUDGES.—There is hereby established at Kansas City an appellate court, to be known as the Kansas City Court of Appeals, the jurisdiction of which shall be coextensive with all counties in the State except those embraced in the jurisdiction of the St. Louis Court of Appeals. * * *

In 1901 the Legislature of Missouri (Session Laws 1901, p. 120) created two divisions of the Circuit Court of Jasper County, composing the 25th judicial circuit, and established a circuit court at Joplin, requiring the Clerk to

keep separate books and records thereof and an office at that place, where three terms of court are held (R. S. 1919, Sec. 2524). Carthage was then, and is yet, the County Seat.

The State of Missouri has 114 counties, divided into numerous judicial circuits and each circuit, except five, contains more than one county.

Missouri R. S., 1919, Secs. 2461-2498;
Laws of Missouri, 1921, pp. 243-246;
First Extra Session, 1921, pp. 50-53.

In each of the circuits containing only one county, the 6th judicial circuit composed of Buchanan County, in which St. Joseph is located; the 16th consisting of Jackson County, in which Kansas City is located; the 23rd consisting of Green County, in which Springfield is located, and the 25th consisting of the County of Jasper, in which Joplin is located, have terms of the Federal Court, at each of which places the Clerk of the United States Court is required to keep his office open at all times for the transaction of the business of the Court. The 8th judicial circuit in the Eastern Federal District consists of the city of St. Louis and the Federal Court is held and the clerk keeps an office there (Section 91, Judicial Code).

ARGUMENT.

What is stated herein is intended to be corrobatory of and supplementary to the majority opinion of the Supreme Court of Missouri. The petitioner contends that the portion of Section 1 of the Act of Congress of 1888 preceding the proviso, should be supplemented by Section 1555 of the Missouri Statute and respondent insists that the proviso applies, when properly construed, as supplemented by Section 1554 and 1583 of the Missouri Statutes, which, when followed, effects the necessary conformity and establishes a practical method of creating Federal Court judgment liens applicable to this case.

It is, and will forever be, an impossibility to work out the application of any law, State or Federal, or State and Federal, that will give all judgment creditors liens of contemporaneous inception equal opportunities. No law can be devised on that subject that will effect conformity to a mathematical nicety. Judgment liens must of necessity be applied to courts in different localities, to the same court, to courts of different jurisdictions, and to many other situations and conditions too numerous to enumerate.

That judgment liens have ever been a subject for consideration in England and in this Country is apparent from 34 C. J. 567, §870, et seq.

> "The process act of 1789 (ch. 21) expressly adopted the forms of writs and modes of process of the State Courts, in suits at common law."
>
> Beers vs. Houghton, 9 Pet. 329, 359.

Thus early in the history of this Country disclosing a purpose on the part of Congress to digress as little as possible from the practice prevailing in the State Courts.

Section 914 of the United States Revised Statutes, taken from the Act of Congress of June 1, 1872 (17 Stat. L. 196) providing that the practice in the Federal Courts should conform to the State practice in the Civil cases (Indianapolis and St. Louis R. Company vs. Horst 93 U. S. 291, 300, 3 Otto), discloses a purpose upon the part of Congress to effect a conformity between National and State courts. In that case it is said that the conformity thus effected was "intended to relieve the legal profession from the burden of studying and practicing under two distinct and different systems of the law of procedure in the same locality, one obtaining in the courts of the United States, the other in courts of the State". The same purpose prompted Section 916, U. S. Revised Statutes, concerning conformity of Federal and State Court judgments and executions and many other similar Acts of Congress that will occur to the reader. Congress thus having manifested a disposition to aid those learned in the legal profession, in order to more effectively avoid confusion, we are impressed with the response to a demand for similar consideration in matters affecting those unlearned in the law, judgment lien creditors and others seeking information concerning titles to real estate.

Judge Caldwell, in the case of Dartmouth Savings Bank vs. Bates, 44 Fed. 546, 549, suggests the idea which must prevail in the construction of legislation by Congress on this subject, and which must govern in the construction of any legislation involving judgment liens of courts in all jurisdictions. The object was, as there held, to place in the Court House, where people naturally and usually go to seek information concerning judgment liens, the necessary facts. The Court House, and the records therein are, in Missouri, the places to which, and only to which, the people are naturally inclined to turn for such information. On page 20 of Petitioner's brief we find this statement:

> "There is not any one place or any one office in Jasper County, Missouri where all the judgments of the State Courts of record which are liens on real estate in the County may be found."

Petitioner is wrong in his conclusion and statement for the reason that in Jasper County, Missouri, and all other Counties within the State, there is but one place, and that is the county court house, wherein a judgment of any kind or character which are liens on real estate within such County, must be recorded, and there only can they be found.

The case of Shrew vs. Jones, 2 McLean 78, 22 Fed. Cas. 40, No. 12,818), decided in 1840, discussing the territorial jurisdiction of State and Federal Courts, closes as follows:

> "If it shall be deemed important to have the records of the judgments of this court recorded in the County where the lands of the defendant are situated it may be required by Acts of Congress, or by rule of this Court, if the law of the State shall require the clerks to make such record".

Preliminary to a more particular discussion of the Act of Congress of 1888, attention is directed to the following:

> "In the construction of any statute, the history and reason of its enactment may always be invoked in its construction." (State vs. Balch, 178 Mo., 392, 409), as well as its "reason and spirit."
>
> Virtebo vs. Friedlander, 120 U. S., 707, 726.

In the same connection we also quote:

> "The intention of the law maker constitutes the law; a thing may be within the letter of the statute and not within its meaning; and within its meaning though not within its terms."

Indianapolis & St. Louis R. Co. vs. Horst, 93 U. S., 291, 300, 3 Otto;
Brown vs. Duchesne, 19 How. 183, 197.

Congress evidently being impelled by a desire to provide further and more effective means of information to the people interested in Federal Court judgments than then existed adopted the Act of Congress of 1888, containing the three Sections, the latter dispensing with the docketing or filing of a transcript of a judgment of the Federal Court in the County wherein such judgment was rendered. Seven years later that section was amended and required such judgments or transcripts to be filed in the County where rendered, only in cases in which the Clerk of the Federal Court did not keep a permanent office and a judgment record open at all times for public inspection in such County. Seven years thereafter Section 3, as amended, was repealed.

In considering the above Act of Congress we quote the following rule:

> "But it is a familiar canon of interpretation, that all former statutes on the same subject, whether repealed or unrepealed, may be considered in construing the provisions that remain in force".

Virtebo vs. Friedlander, 120 U. S. 707, 725, & 726.

In the interpretation of statutes, provisions which have been repealed may yet be considered in construing the provisions that remain in force.

Ex Parte: In the matter of Kang-Gi-Shun-Ga., 109 U. S., 556, 561;
Board of Education vs. Boehm, 102 O. St. 292. (131 N. E. 812, 815);
Searcy vs. State, 167 Pac. 476,478.

It is not improbable that Congress, in dealing with Federal Court judgments and with State Court judgments that

are usually confined to smaller territorial limits, was confronted by the general rule that a judgment ordinarily "creates a lien to the extent of its jurisdiction", (Massingill v. Downs, 7 How. 761, 766; Bayard v. Lombard, 9 How. 530, 539, 540 and Cook v. Avery, 147 U. S. 375, 389 and 390.), and that, therefore, Congress intended that whenever the Federal Court judgment liens was provided for by the state statutes its application should be general for the entire jurisdictional territory and not to be confined to any particular county.

Such theory would be entirely obnoxious to the contention advanced by petitioner that the first part of Section 1 of the Act of 1888, preceding a proviso, should be treated as supplemented by Section 1555 of the Missouri Statute and thus create a lien of the Federal Court judgment solely for the county in which the judgment was rendered.

In considering Federal Court judgments and undertaking to have said Section 1555 of the Missouri Statute supplement the first portion of said Section 1, we have suggested to us, by the case of Bayard v. Lombard, 9 How. 530, 540 and what is there said with reference to statutes similar to said Section 1555 of the Missouri Statute, that "The term 'county' used in this connection would be deemed merely a word used to designate the known limits of a given jurisdiction". The elimination of such incongruities was evidently one of the purposes that prompted the final repeal of said Section 3 of the Federal Statutes.

If the construction contended for by petitioner that the portion of Section 1 of the Act of 1888, preceding the proviso, is erroneous, the respondent yet recognizes that it is necessary to find and hold that the proviso is sufficiently supplemented by Sections 1554 and 1583 of the Missouri Statute as to create a workable scheme for the perfecting of Federal Court judgment liens.

The definition, "a court of general jurisdiction", as used in the first part of Section 1 of the Act of Congress of 1888, may be applied to the appellate courts of Missouri, under the constitutional provisions above quoted, and besides, the constitution of Missouri, quoted at page 13 of petitioner's brief, defines circuit courts as courts of exclusive, "original jurisdiction".

When we undertake to classify the circuit courts of Missouri as the only courts of general jurisdiction, contended by petitioner to be a supplement of the first portion of Section 1 of the Act of Congress of 1888, we do violence to the rules of statutory construction, because the appellate court, where final judgment may be entered, (R. S. Mo., 1919, Sec. 1415), have jurisdiction not only in all the cases over which the circuit court presides, but applies to a multitude of other and additional cases, as shown by the constitutional provisions concerning appellate courts (pp. 116, 117 and 133, Vol. 1, R. S. Mo.), that cannot be affected by the jurisdiction of the circuit courts.

The proviso contained in Section 1 of said Act of Congress of 1888 makes no reference to courts of general jurisdiction, but refers to judgments of a "State Court".

In considering said Section 1 with reference to the last above referred to Missouri Constitutional provisions and Sections 1554 and 1583 of the Missouri Statutes, it is a just construction to say that the judgments of the appellate courts are classified with the judgments of the Federal Courts, and that if there is any distinction to be made of the first provision of said Section 1 of the Act of Congress of 1888, preceding the proviso, then the proviso of that section is sufficiently flexible to permit of two classifications, one, applicable to the courts of original jurisdiction and the other to the higher courts of general jurisdiction of the state, and as to the latter courts, the provisions of said Sections 1554 and 1583 are uniform. We are not in this

contention unmindful that violence must not be done to the conformity of inferior court liens.

We contend that conformity is more nearly effected upon our construction than upon the construction by the petitioner. If we say that a lien of a judgment entered in the Federal Court at Joplin takes effect the day it is rendered, then we have destroyed conformity in the judgments of the Federal Court, because if in the same case a judgment is rendered against a defendant who owned real estate in Jasper County and also against another defendant who owned real estate in a different county in the same division of the Federal Court the latter judgment creditor would be placed at a disadvantage, who, according to the theory advanced by petitioner, would have to transcript his judgment to the other county. Neither can exact conformity be effected in Missouri as to the State Circuit Courts, under the existing law, or any law that can be devised, because the same condition and difficulty exists as to any judgment rendered in the circuit court of any county of the State.

Another noticeable defect in the contention of petitioner and the illustrations used in his behalf is that it would be refuted by endless other imaginary conditions that might arise. See illustrations in majority opinion of the Supreme Court of Missouri (R. 23).

The comparison of what must be done in complying with Sections 1554 and 1583 of the Missouri Statutes and what is required of a judgment creditor in the state circuit court under Section 1555 of the Missouri Statute suggests that the holder of a Federal Court judgment may have more than one day in which to perfect his lien by complying with said Sections 1554 and 1583. While under said Section 1556 the judgment lien commences on the day of the rendition, there are exceptions to the general rule. There may be two judgments rendered at the same term,

and Section 1453 of the Missouri Revised Statutes of 1919 provides that a new trial may be granted and Section 1456 allows four days therefor. The proper practice in all cases is "merely to enter the verdict of the jury and suspend the entry of the judgment until the expiration of the time within which an application for a new trial can be made" (Lane v. Kingsbury, 11 Mo. 402, 407 & 408; St. Louis D. & S. Loan Ass'n. v. Augustin, 2 Mo. App. 123, 132; Scott v. Scott, 44 Mo. App. 600, 602 & 603; Costello v. Kansas City, 209 Mo. App. 155, 161). However, a different practice appears to have sprung up in Missouri, as a matter of expediency, but that does not necessarily determine the questions of priorities (Cramer v. Barmon, 193 Mo. 327, 329).

It is also necessary in this connection to notice that if a Federal Court judgment transcript is filed in the office of the Clerk of said Circuit Court and on the same day judgment is rendered in that court, then it should be held that the two judgments were rendered at the same term, and governed by said Section 1556 of the Missouri Statutes, so that the liens of the two judgments would "commence on the last day of the term". This point was raised but not decided in the case of Bradley v. Heffernan, 156 Mo. 653, 662.

In discussing the above situation, and numerous others that might be imagined, and in considering the questions raised here, it should not be overlooked that often "for the purpose of justice" the doctrine of relation must be considered (Gibson v. Chouteau, 13 Wall 92, 100 and 101, and Newhall v. Sanger, 2 Otto, 761, 766), while if authority therefore is necessary to the effect that where two liens are created on the same day each has the same rights, we cite Rockhill v. Hanna, 15 How. 189, 195, except that the one upon which execution is first levied has priority. Shir-

ley v. Brown, 80 Mo. 244 and Bruce v. Vogel, 30 Mo. 100, 103 & 104.

Although it is impossible to find or imagine a situation in which complete conformity may be accomplished and even if we concede, which we do not, that the statutes providing for judgment liens should be strictly construed, we are enlightened by the following observations:

> "Strict construction is not a substitute for all other rules. It does not mean that whenever a controversy is or can be raised of the meaning of a statute, ambiguity occurs, which immediately and inevitably determines the interpretation of the statute. The decisive simplicity of such effect is very striking. It conveniently removes all difficulties from judgment in many cases of controverted construction of laws. But we cannot concede such effect to the rule, nor is such effect necessary in order to make the rule useful and, at times, decisive. Its proper office is to help to solve ambiguities, not to compel an immediate surrender to them,—to be an element in decision, and effective, maybe, when all other tests of meaning have been employed which experience has afforded, and which it is the duty of courts to consider when rights are claimed under a statute. Will courts ever be exempt, or have they ever been exempt, from that duty? Has skill in the use of language ever been so universal, or will it ever be so universal, as to make indubitably clear the meaning of legislation? Has forecast of events ever been so sure, or will it ever be so sure, as to make inevitably certain all the objects contemplated by a statute? We think not, and there never will be a time in which judicial interpretation of laws will not be invoked, and it cannot be omitted because a doubt may be asserted concerning the meaning of the legislators.

We repeat, it is the judicial duty to ascertain if doubt exists."

Citizens' Bank of Louisiana vs. Parker, 192 U. S. 73, 85 & 86.

On the question of conformity we submit that the reading of Sections 1554 and 1583 of the Missouri statute in connection with the Act of Congress of 1888 a situation is created that more nearly meets the intention of Congress, and the underlying purpose thereof from the very inception of this question than could be created in any other manner. It is absolutely impossible, as between two jurisdictions, either State or Federal, to create literal conformity, and this is true not alone between courts of different jurisdiction, but courts of the same jurisdiction but in different localities. Reasonable conformity is what the law requires and that an unnecessary burden be not placed upon judgment creditors. Neither the Missouri Legislature nor Congress legislated with the idea in mind of protecting a particular class judgment creditors, but the primary and fundamental purpose of the legislation is for the protection of the people in the conveyance of their property.

When Congress legislated in reference to the Federal District or Circuit Courts it thereby provided the manner and the means by which a Federal District or Circuit Court judgment became a lien in connection with the action of the different State Legislatures, yielding certain authority to the State Legislatures, and to say the purpose of legislation shall be defeated because of the impossibility to make each judgment lien come into existence at the identical minute, as is suggested on page 21 of Petitioner's brief and argument, would make it impossible for any legislative body to create a condition whereby there would be conformity in any sense.

Appellant in this case, throughout his argument abandons the reasonable interpretation of the Statute as supplemented by the State Legislation and enters the field of imagination wherein he develops different situations that might arise thereby creating ambiguities instead of undertaking to solve the intent of the Congress and the State Legislature. By his imaginary situations he undertakes to compel a surrender to such ambiguities. His contemplated future controversies are forecasts of situations that may arise which would entirely destroy both the Act of Congress and the different Acts of the Missouri Legislature. This course of reasoning is not only condemned, but absolutely repudiated as a rule of judicial interpretation in the case of Citizens' State Bank of Louisiana vs. Parker, 192 U. S. 73, 85, 86, *supra.*

The respondent respectfully prays that the judgment of the Supreme Court of Missouri be affirmed.

W. R. ROBERTSON,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 199.—October Term, 1926.

William A. Rhea, Petitioner, *vs.* Thomas C. Smith.	On Writ of Certiorari to the Supreme Court of the State of Missouri.

[May 31, 1927.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This case involves the validity of a lien of a judgment of the Federal District Court of the Western District of Missouri sitting at Joplin, upon land of the judgment debtor in Jasper County in that district, of which Joplin is the county seat. It turns on the question whether the law of Missouri providing for the registration, recording, docketing and indexing of judgments of the United States district courts for the purpose of making them liens upon land in that State, conforms to the provisions of the state law upon the same subject in reference to liens of judgments of the courts of record of the State. If it does, the lien and the title of the petitioner fail, and the judgment of the Supreme Court of Missouri must be affirmed. If not, then the case must be reversed.

The suit herein was brought in Jasper County by William A. Rhea, in one count to determine title to certain real estate in that county, and in another by ejectment to recover its possession. There was a judgment for the defendant in the trial court, and he appealed. The facts were as follows:

Blanche H. Whitlock was the common source of title of the plaintiff and the defendant, and in 1921, owned the property in dispute. As plaintiff, she had brought a suit in the United States District Court for the Southern Division of the Western District of Missouri at Joplin in Jasper County. On January 10, 1921, the suit was dismissed and the costs of the case were adjudged against her in the sum of $8,890.20. On April 5, 1921, she conveyed the property in dispute to the defendant, Thomas C. Smith for a consideration of $5,000. On July 22, 1921, execution was issued upon the judgment in the Federal court, and under it the marshal sold

part of the land and conveyed it by his deed to the plaintiff Rhea for $200. In December, 1921, another execution was issued under which the marshal sold and conveyed to Rhea the remainder of the land in dispute for $25. The contention of Rhea is that the judgment of the Federal court is a lien on the real estate from its rendition, that he acquired title to the fee through the execution sales, and that it was superior to any title acquired by subsequent conveyance of the judgment debtor. Smith, the respondent, contended that in the absence of a transcript of the judgment of the Federal court filed in the office of the Clerk of the Circuit Court of Jasper County as required by the Missouri law, the judgment was not a lien, and the conveyance to Smith, the respondent, by the judgment debtor was free from its encumbrance. The case was appealed to the Supreme Court of Missouri and heard by the Second Division. One of the judges having been absent and the two judges constituting the division differing in opinion, the case was heard *en banc*, and a majority of the court affirmed the judgment below, two of the judges dissenting.

In *Wayman* v. *Southard*, 10 Wheat. 1, 21, 22, this Court said through Chief Justice Marshall, referring to the effect of the last clause of section 8 of Article I of the Constitution, authorizing Congress to make laws necessary and proper for carrying into execution powers vested in any department of the Government:

"That a power to make laws for carrying into execution all the judgments which the judicial department has power to pronounce, is expressly conferred by this clause, seems to be one of those plain propositions which reasoning can not render plainer. The terms of the clause neither require nor admit of elucidation. The Court therefore will only say, that no doubt whatever is entertained on the power of Congress over the subject."

By section 37 of the Process Act of May 19, 1828, 4 Stat., c. 68, pp. 278, 281, writs of execution and other final process issued on judgments and decrees, rendered in any of the courts of the United States were to be the same as those used in the courts of the State provided, that it should be in the power of the courts, if they saw fit in their discretion, by rules of court, so far to alter final process in said courts as to conform the same to any change which might be adopted by the legislatures of the respective states for the state courts.

The effect of this statute was considered in *Massingill* v. *Downs*, 7 How. 760, in which the question was of the validity of a lien of

a judgment obtained in the Circuit Court of the United States for the District of Mississippi in 1839. In 1841 the State of Mississippi had passed a law requiring judgments to be recorded in a particular way in order to make them a lien upon property. It was held that the statute did not abrogate the lien which had been acquired under the judgment of 1839, although the latter had not been recorded in the manner required by the state. Mr. Justice McLean, speaking for the Court said:

"In those states where the judgment on the execution of a state court creates a lien only within the county in which the judgment is entered, it has not been doubted that a similar proceeding in the Circuit Court of the United States would create a lien to the extent of its jurisdiction. This has been the practical construction of the power of the courts of the United States, whether the lien was held to be created by the issuing of process or by express statute. Any other construction would materially affect, and in some degree subvert, the judicial power of the Union. It would place suitors in the state courts in a much better condition than in the federal courts."

It was held therefore in that case that the plaintiffs in the judgment had acquired a right under the authority of the United States and that that right could not be affected by subsequent act of the State. This principle was affirmed in *Brown* v. *Pierce*, 7 Wall. 217, and *Williams* v. *Benedict*, 8 How. 107.

Such was the state of the law until the passage of the Act of August 1, 1888, c. 29, 25 Stat. 357, which was the first formal act to regulate fully the liens of judgments and decrees of the courts of the United States. The whole Act was as follows:

"An Act to regulate the liens of judgments and decrees of the courts of the United States.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That judgments and decrees rendered in a circuit or district court of the United States within any state, shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such State: Provided, That whenever the laws of any State require a judgment or decree of a State court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana, before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such State shall authorize the judg-

ments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the States.

"Section 2. That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

"Sec. 3. Nothing herein shall be construed to require the docketing of a judgment or decree of a United States court, or the filing of a transcript thereof, in any state office within the same county or parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county."

The third section was amended by the Act of March 2, 1895, 28 Stat. 813, ch. 180, to read as follows:

"Nothing herein shall be construed to require the docketing of a judgment or decree of a United States Court or the filing of a transcript thereof in any state office within the same county or the same parish in the state of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county, if the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish".

By the Act of August 23, 1916, the amending act of 1895 was repealed, ch. 397, 39 Stat. 531.

The legislation of Missouri (Mo. Rev. Statutes 1919) adopted in an effort to comply with the requirement of section 1 of the Congressional act of 1888 was as follows:

"Sec. 1554. Lien of Judgment in Supreme Court, Courts of Appeals, and Federal Courts in This State.—Judgments and decrees obtained in the Supreme Court, in any United States district or circuit court held within this state, in the Kansas City Court of Appeals or the St. Louis Court of Appeals, shall, upon the filing of a transcript thereof in the office of the clerk of any circuit court, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

"Sec. 1555. Lien in Courts of Record Generally.—Judgment and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held.

"Sec. 1556. The Commencement, Extent, and Duration of Lien. —The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered."

It is clear that Congress by the first section of the Act of August 1, 1888, quoted above, intended to change and limit the existing rule, as stated by this Court, through Justice McLean, in *Massingill* v. *Jones, supra,* that Federal court judgments were a lien upon lands throughout the territorial jurisdictions of the respective Federal courts, but intended to do this only in those states which passed laws making the conditions of creation, scope and territorial application of the liens of Federal court judgments the same as state court judgments, so that where any state has not passed such laws, the rule that Federal judgments are liens throughout the territorial jurisdiction of such courts must still be in force. *Dartmouth Savings Bank* v. *Bates*, 44 Fed. 546; *Shrew* v. *Jones*, 2 McLean 78—Fed. Cases No. 12818, 22 Fed. Cases 40.

The Missouri Statutes prescribe that judgments rendered by any state court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held, and the lien shall commence on the day of the rendition of the judgment and shall continue for three years. They further provide that judgments obtained in the Supreme Court of the State, in any Federal court held within the State, and in the Court of Appeals of either Kansas City or St. Louis, shall upon the filing of a transcript in the office of the clerk of any circuit court be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

It is very clear from this recital that a lien of a judgment of the Federal court upon lands in the county in which it sits, if we give effect to the state statute, can not be a lien unless a transcript of the judgment shall be made and filed in the office of the clerk of the circuit court of the State in that county, whereas no such transcript of a judgment in the state circuit court is required to

create a lien for its judgment, but the lien takes effect the minute that it is entered on its record. Not only is this true with respect to the state circuit court of the county, a court of general jurisdiction, but it is also true of judgments in the county court and in the probate court of that county which are courts of record.

The majority opinion of the state supreme court in this case expresses the view that the difference is of so slight a character that it ought not to be regarded as a failure to conform to the Federal statute. The opinion further points out that judgments of the Supreme Court of the State and of the courts of appeals of St. Louis and Kansas City can only become a lien upon the real estate of a judgment defendant in a particular county upon the filing of a transcript of them in the clerk's office of the circuit court where the land lies. Thus it is said that the United States District and Circuit Courts are put on the same basis as these appellate state courts having like the Federal District Court a larger jurisdiction than a county.

It is obvious, however, that the district court of the United States is a court of first instance of general jurisdiction just as the circuit courts of the various counties in Missouri are courts of general jurisdiction of the first instance. The conformity required should obtain as between them and not as between the Federal court and the state appellate courts.

We are dealing here with a question necessarily of great nicety in determining the effect and the priority of liens upon real estate, and the subject requires exactness. Merely approximate conformity with reference to such a subject matter will not do, especially where complete conformity is entirely possible. The Supreme Court of Missouri in its opinion says it would take but a short time and very little trouble to transcribe a judgment of the Federal court sitting in a county seat and to file it in the office of the clerk of the state circuit court in the same place on the day of its rendition and thus put it on par with the lien of any judgment of the state circuit court rendered on the same day. It may be that the transcript of the judgment if properly filed even if the transcribing be delayed, as in usual course it is likely to be for several days, would not prejudice the holder of a judgment in the Federal court, because its lien would date from its rendition in the Federal court. The risk to be run, however, is in the danger that the agent or attorney of a judg-

ment creditor in the Federal court may forget to have the judgment transcribed and filed in the clerk's office of the circuit court of the county. Such forgetfulness by those charged with the duty is a factor to be considered and makes a real difference between the provision for the lien of the Federal court judgment and the instant attaching of a lien upon the entry of the state court judgment without further action.

Reference is made by the state supreme court to *Re Jackson Light and Traction Company* v. *Newton*, 269 Fed. 223, a decision of the Circuit Court of Appeals of the Fifth Circuit concerning a judgment rendered in Mississippi holding that the required conformity was furnished by the state statute. The statute required the enrollment of a judgment in the state court of general jurisdiction in order that it might become a lien upon the property in the county of its jurisdiction, only if enrolled twenty days after the term of entry of the judgment. The judgments of the Federal court, the state supreme court and the chancery courts also became liens from the time they were enrolled in the county where the land lay. We think that case may well be distinguished from this one because necessity of enrollment was exacted as to every court.

The majority opinion of the Supreme Court of Missouri further dwells upon a significance thought to attach to the purpose of Congress in repealing section 3 of the statute of 1888 as amended by the statute of 1895. That section thus amended specifically forbade any state statute seeking conformity to require the docketing of a judgment or decree of a Federal court, or the filing of a transcript thereof in any state office within the same county in which the Federal judgment or decree was rendered, in order to be a lien on the property in that county, if the clerk of the Federal court had a permanent office and a judgment record open at all times for public inspection in such county. It is said that the repeal of that section indicates Congress's intention to permit the requirement in the state statute that there should be some additional record in the state court in the county where the Federal court sits of the Federal judgment without destroying the required conformity. Even if this be conceded, it does not show that in order to secure conformity there must not be a similar requirement for a formal record in the state court of the county of its judgment to create a lien. It is the inequality which permits a lien

instantly to attach to the rendition of the judgment without more in the state court which does not so attach in the Federal court in that same county that prevents compliance with the requirement of section 1 of the act of 1888. In the Mississippi case, above referred to, there was the same formality of enrollment within twenty days after the judgment in order to secure a lien in both the state court and the Federal court in the county where both sat.

We think that the three sections, 1555, 1556 and 1554, do not secure the needed conformity in the creation, extent and operation of the resulting liens upon land as between Federal and state court judgments. The lien of Federal court judgments in Missouri therefore attaches to all lands of the judgment debtor lying in the counties within the respective jurisdictions of the two Federal district courts in that State. This requires a reversal in this case of judgment of the Supreme Court of Missouri. The cause is remanded for further proceedings not inconsistent with this opinion.

A true copy.

Test:

Clerk, Supreme Court, U. S.